THE

American Law Journal

AND

MISCELLANEOUS REPERTORY.

BY JOHN E. HALL, ESQ.
OF BALTIMORE.

VOL. I. JANUARY, 1808. No. I.

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PHILADELPHIA:

PUBLISHED BY W. P. FARRAND AND CO.
AND BY FARRAND, MALLORY AND CO. BOSTON.
FRY AND KAMMERER, PRINTERS.
1808.

DISTRICT OF PENNSYLVANIA, TO WIT:

BE IT REMEMBERED, That on the thirteenth day of July in the thirty-third year of the Independence of the United States of America, A. D. 1808, William P. Farrand and Co. of the said district have deposited in this office, the title of a book the right whereof they claim as proprietors, in the words following, to wit:

SEAL

" The American Law Journal and Miscellaneous Repertory. Containing Adjudged Cases in the Supreme Court of the United States, Adjudged Cases in the District and State Courts of the United States, Opinions of Eminent Counsellors, Notices of New Publications, Essays on Legal Questions, Biographical Memoirs, Congressional and Parliamentary Debates, on momentous questions, Legal Information respecting the most important Laws of the different States. By John E. Hall, Esq. of Baltimore.

" Seu linguam causis acuis, seu civica jura
Respondere paras."

In conformity to the act of the Congress of the United States, intituled, " An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned:" And also to the act, entitled, " An act supplementary to an act, entitled, ' An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

D. CALDWELL,
Clerk of the District of Pennsylvania.

TO READERS AND CORRESPONDENTS.

WE regret our inability to furnish an abstract of the acts of Congress passed at the last session, occasioned by the great delay in printing them at Washington. They will probably be published in time for the third number of our Journal.

To prevent any mistakes, it is to be understood that all additions which the Editor may take the liberty of making to any communications, will be distinguished by brackets, [thus].

Gentlemen who are preparing reports for the press will confer a favour upon the Editor and promote their own views, by communicating some of the most important cases to him. An offer of this nature, of extracts from the MS. Reports of the Honourable Judge Bay, of Charleston, South-Carolina, is very cordially received.

Booksellers are requested to apprize the Editor or Publishers of new works.

The different agents of the Law Journal are requested to transmit lists of subscribers obtained by them, to the Publishers, at Philadelphia, on or before the 1st of December next. They will distinguish the names of professional gentlemen from others, so that the list of subscribers, which will accompany the fourth number, may exhibit some view of the number of attorneys in this country.

PREFACE.

In almost every department of science its professors have established periodical journals to aid them in the prosecution of their various inquiries; but until very recently, the Bar has been entirely without this assistance.

In the year 1803, a Law Journal was commenced in London by John Morgan and Thomas Walter Williams, Esqrs. which has been found of eminent utility, not only to the profession, but to the community at large. The frequent recurrence of publication enabled the editors to give the earliest intelligence of new and important decisions on points in which the commercial world was deeply interested; while *the immunities of invisibility* offered a fair opportunity to professional gentlemen, to prosecute their researches by anonymous communications. The first law characters of Great Britain entered the lists in that field, while those of less knowledge silently contemplated the controversy and acquired experience from the ingenuity which the disputants displayed.

If a Law Journal have been found to be so useful and necessary in Great Britain, where notoriety and uniformity may be established by an appeal to one supreme tribunal, how important would such a publication be, in our country, governed as it is by the various and conflicting laws of different states, which are yet

so intimately connected by commercial and political relations?

An act may be legal in one state which is not so in another. Every merchant must sensibly feel the inconvenience and perplexity which result from his ignorance of those laws by which his dearest rights and most important privileges are regulated. If he apply for advice respecting a contract which has been made in a different state, his counsel may not be able to procure the statute by which that transaction is governed: and if it be in his possession, he is still ignorant of the exposition or limitation which it has received from juridical adjudications.

It frequently happens that instruments of writing, which are duly authenticated according to the laws of one state, when opened in the courts of another, are found to be perfectly nugatory; and the unfortunate suitor, after incurring a heavy expense, is unable to assert his right or must submit to an unjust claim, because he was ignorant of the laws which prevail where the controversy has existed.

It would be an endless task to enumerate the inconveniences of this nature, which exist: they must be familiar to the experience of every one.

At the instance of several professional friends, the Editor has been induced to propose the publication of a Law Journal, on a plan which is calculated, in some measure, to remove the inconveniences which have been detailed. If he should be so fortunate as to attract the attention of professional gentlemen throughout the country, and be aided by the communication of such laws and decisions of general importance, as are enacted or adjudged in the respective states, the work,

which is now submitted to their patronage, may, in time, comprise the rudiments of a complete system of American jurisprudence.

All persons engaged in commercial transactions, as well as those who are attached to the bar, are interested in a publication of such extensive usefulness: and when it is promised that every effort of perseverance shall be brought to the task, the Editor may be permitted to express a hope, that his purpose will not be frustrated by indifference nor neglect. His pleasure will consist in the improvement which he expects to derive from this employment, and his reward will be derived from the consciousness of performing that duty, which every man owes to society according to the measure of his talents.

> Hoc opus, hoc studium, parvi properemus et ampli,
> Si patriæ volumus, si nobis vivere cari.

It only remains for the Editor to indicate a few subjects for the attention of such professional gentlemen as may be willing to contribute to the success of this work. The feeble exertions of a youthful individual, unaided by the impressive sanction of experience, can effect but little without the cordial cooperation of those from whom he has some right to claim assistance.

A brief digest of such laws of the different states as are of general importance, particularly, of those which relate to negotiable paper, to the manner of executing legal instruments, such as deeds, letters of attorney, &c. and of authenticating them so as to make them evidence—adjudged cases in England or America—opinions delivered by eminent counsellors of any country—lists of English statutes which have been extended to the different states—early notices of new publications

on subjects of law, commerce or politics—essays on legal or commercial subjects—biographical memoirs of distinguished characters—sketches of parliamentary and congressional debates, &c. &c. may not be uninteresting to those who would relieve the aridity of juridical inquiries by contemplating the various incidents of human life, admiring the scintillations of wit, the eloquence of the orator or the schemes of the statesman.

Baltimore, June 1808.

THE

AMERICAN

Law Journal and Miscellany.

Supreme Court of the United States.

FEBRUARY TERM, 1807.

Rhinelander *v.* Insurance Company of Pennsylvania.

ABANDONMENT—TOTAL LOSS. Where there is a complete taking at sea by a belligerent who has taken full possession of the vessel as prize, and continues that possession to the time of the abandonment, there exists a total loss; and the act of abandonment vests the right to the thing abandoned in the insurer, and the amount of the insurance in the insured.

The state of the loss at the time of the abandonment must fix the right of the insured to recover.

THIS was an action on a policy of insurance upon the freight of the ship *Manhattan* from *New-York* to *Batavia*, &c. and back. It was tried at the *October* sessions of the Circuit Court for the *Pennsylvania* district, and a verdict found for the plaintiff subject to the opinion of the court upon a case stated; which case was adjourned from the Circuit to the Supreme Court, and now came on to be heard. The case stated the *Manhattan* to be a neutral ship. On her return voyage, on the 10th of *February*, 1805, she was captured by the British frigate *Busy William;* the mate and 21 of the crew were taken

out and two British officers and 15 sailors put on board, and she was ordered to *Bermuda*. On the same day, the mate was put, by the captors, on board a vessel bound for *New-York*, where he arrived on the 26th *February*. The owners being informed of the capture, on the 2d *March* claimed a total loss by reason of the *capture*, and offered to abandon. On 2d *April*, payment was demanded of the office and refused. On 6th *June*, the action was brought.

The vessel after being carried into *Bermuda* was libelled as prize. On 20th *April*, vessel and cargo were acquitted and restitution ordered. From this sentence, so far as respected the cargo, the captors appealed, which appeal is still undecided. The cargo was ordered to be delivered to the owners on their giving security. On the 8th *May* security was entered, and this was known to the owners before action brought; but the captain did not take actual possession of the ship till 11th *June*. The owners applied to the office for counter-security, which was refused.

The question referred by the case to the court was, Whether the plaintiff be intitled to recover for a total loss?

Rawle and *Lewis* argued for the defendants, 1st. That the stopping of the *Manhattan* on the 10th *February* by the *Busy William*, and ordering her to *Bermuda*, did not constitute a loss so as to authorize an abandonment. It was not a capture by an enemy, but merely a stopping on the high seas of a neutral by a belligerent for search; and a sending in for further examination. As the abandonment was made on the information of this taking only, without any knowledge of the subsequent proceedings, as it was made for this cause only, as this cause did not authorize it, and as no other abandonment has been since made, the subsequent transaction cannot relate back so as to give the plaintiffs a right against the underwriters.

2. The mere institution of judicial proceedings against a neutral vessel, unless followed by condemnation, gave no right to abandon.

3. That though after the vessel was acquitted on the 20th *April*, an appeal was entered as to the cargo, yet by the entry

of security on 8th *May*, the vessel was virtually restored to the owners, and in perfect safety; and was known so to be by the owners. As therefore, no loss existed at the time of the action brought, the plaintiffs could not recover; for they argued that the state of the loss at that time was the rule.

4. That though not before action brought, yet as before *plea pleaded*, the vessel had arrived in safety at the port of her destination, had performed her voyage and had earned her freight, the plaintiffs had no right to recover.

Ingersoll, *Hopkinson & Tilghman* for the plaintiff argued: 1st. That the capture of the *Manhattan* by the *Busy William* was not an exercise of the acknowledged right of search, but a capture as prize. Her crew was taken out; *British* officers and seamen put on board; she was sent to *Bermuda* and libelled as *prize*. The plaintiff was therefore authorized to abandon on the 2d *March*.

2. The state of the loss at the time of the abandonment is to decide the right of recovery. By the abandonment, the property is devested from the insured and vested in the insurer; and a subsequent order of restoration restores it not to the former owners, but to the underwriters. As therefore there was a loss at the time of the abandonment, the plaintiff may recover.

MARSHALL, *Chief Justice*, delivered the opinion of the court. After stating the case he proceeded in substance as follows:

1. Had the insured a right to abandon when the offer was made?

2. Have any circumstances since occurred to affect their right?

To give a right to abandon there must have existed a total loss by one of the perils insured against, either real and absolute, or legal and technical. A capture by one belligerent from another constitutes a technical total loss, and gives an immediate right to abandon, though the property may afterwards be restored. So too of an embargo or detention by a foreign friendly power. On general principles and on analogy there is

no difference between the capture by a belligerent from a belligerent and from a neutral. In both it is made with a design to deprive the owner of the property. A distinction has not been taken in any adjudged case in *England*, and the best general writers arrange them in the same class. [*The learned judge then went through an examination of the English authorities and cases and concluded the first point as follows.*] It is therefore the unanimous opinion of the Court, that where, as in this case, there is a complete taking at sea by a belligerent who has taken full possession of the vessel as prize, and continues that possession to the time of the abandonment, there exists in point of law a total loss; and the act of abandonment vests the right to the thing abandoned in the insurer, and the amount of the insurance in the insured.

2d. The insured in this case has done nothing subsequent to his offer to abandon which can be considered as a relinquishment of the right vested in him by that act. Does the release and return of the vessel deprive the insured of his right to resort to the insurers for a total loss which he acquired by the abandonment? This point has never been settled in England. In *Hamilton* v. *Mendez*, Lord *Mansfield* leaves it undecided whether the state of loss at the time of abandonment, or at the time of action brought, or at the time of the verdict, shall fix the right to recover for a partial or a total loss. A majority of the judges are of opinion, that *the state of the loss at the time of the abandonment must fix the right of the parties to recover in an action afterwards brought;* and the judge who doubts respecting it, is of opinion, that in this case counter-security having been refused by the insurers, the question of freight is yet suspended. It is therefore the unanimous opinion of the Court, that the plaintiff in this case is intitled to recover for a total loss.

Supreme Court of the United States.

FEBRUARY TERM, 1808.

Hudson, Smith and Thomas *v.* Peter A. Guestier.

FOREIGN SENTENCE—JURISDICTION. If a vessel be seized for a violation of a municipal law, the manner of instituting legal proceedings against her must be exclusively regulated by the sovereign power of that country whose laws she has violated: and no foreign court can inquire into the correctness of a condemnation passed in consequence of the seizure, unless the court by which the adjudication has been made lose its jurisdiction, by some circumstance which the law of nations can notice. The court of the captor does not lose its jurisdiction of the case in consequence of the captured vessel being carried into a port of a neutral power, because she is there in such a place of safety that a sentence of condemnation can be passed according to the law of nations.

*Opinions delivered by the Court.**

MARSHALL, *Chief Justice.* This case differs from that of *Rose* v. *Himely*,* in one material fact. The vessel and cargo, which constitute the subject of controversy were seized within the territorial jurisdiction of the government of *St. Domingo*, and carried into a *Spanish* port. While lying in that port, proceedings were regularly instituted in the Court for the island of *Guadaloupe*, the cargo was sold by a provisional order of that Court, after which the vessel and cargo were condemned. The single question therefore which exists in this case is, did the court of the captor lose its jurisdiction

* This and the following case were argued together. The opinions are taken from a copy certified by the clerk of the Supreme Court.

over the captured vessel by its being carried into a *Spanish* port?

The seizure was indisputably a valid seizure, and vested the lawful possession of the vessel in the sovereign of the captor. The right consequently existed in full force to apply immediately to the proper tribunals for an examination of, and decision on, the offence alleged to have been committed. The jurisdiction of those tribunals had attached, and their right to decide upon the offence was completed.

When a seizure is thus made for the violation of a municipal law, the mode of proceeding must be exclusively regulated by the sovereign power of the country; and no foreign court is at liberty to question the correctness of what is done, unless the court passing the sentence lose its jurisdiction by some circumstance, which the law of nations can notice. Recapture, escape or a voluntary discharge of the captured vessel would be such a circumstance, because the sovereign would be thereby deprived of the possession of the thing, and of his power over it. While this possession remains, the *res* may be either restored or sold, the sentence of the court can be executed, and therefore this possession seems to be the essential fact on which the jurisdiction of the court depends.

The laws of the *United States* require, that a vessel which has been seized for violating them should be tried in the district where the offence is committed; and certainly it would be irregular and illegal for the tribunal of a different district to act upon the case. But of this irregularity, it is believed, no foreign court could take notice. The *United States* might enable the admiralty courts of one district to decide on captures made for offences committed in another district. It is an internal regulation to be expounded by our own courts, and of which the law of nations can take no notice. The possession of the thing would be in the sovereign power of the state, and it is competent to that power, to give jurisdiction over it to any of its tribunals. There exists a full power over the subject, and an ability to execute the sentence of the court. The sovereign power, possessing jurisdiction over the thing, must

be presumed by foreign tribunals to have exercised that jurisdiction properly. But if the *res* be out of the power of the sovereign, he cannot act upon it nor delegate authority to act upon it, to his courts.

If these principles be correct, it remains to inquire whether the brig *Sea-Flower* remained in the possession and in the power of the sovereign of the captor after being carried into a *Spanish* port.

Had this been a prize of war, we have precedents and principles which would guide us. The cases cited from *Robinson's Reports*, and the regulations made by *Louis* XVI. in *November* 1779, show that the practice, of condemning prizes of war while lying in neutral ports, has prevailed in *England*, and has been adopted in *France*. The objections to this practice may perhaps be sufficient to induce nations to change it by common consent; but until they change it the practice must be submitted to; and the sentence of condemnation passed under such circumstances will bind the property, unless the legislature of the country in which the captured vessel may be claimed or the law of nations shall otherwise direct.

The sovereign, whose officer has in his name captured a vessel as prize of war, remains in possession of that vessel, and has full power over her so long as she is in a situation in which that possession cannot be rightfully devested. The fact whether she be an enemy vessel or not, ought, however, to be judicially inquired into and decided; and therefore the property in a neutral, captured as an enemy, is never changed until sentence of condemnation have passed; and the practice of nations requires that a vessel shall be in a place of safety before such sentence can be rendered. In the port of a neutral she is in a place of safety; and the possession of the captor cannot be lawfully devested because the neutral sovereign by himself or by his courts can take no cognizance of the question of prize or no prize. This position is not intended to apply to the case of a sovereign bound by particular treaties to one of the belligerents; it is intended to apply only to those neutrals who are free to act according to the general law of nations. In such

case the neutral sovereign cannot arrest, from the possession of the captor, a prize of war brought into his ports.

A vessel captured as prize of war is then, while lying in the port of a neutral, still in the possession of the sovereign of the captor, and that possession cannot be rightfully devested.

It is objected that his courts can take no jurisdiction of a vessel under such circumstances, because they cannot enforce a sentence of restitution.

But it is to be recollected that the possession of the captor is, in principle, the possession of his sovereign. He is commissioned to seize in the name of the sovereign, and is as much an officer appointed for that purpose, as one, who, in the body of a county, serves a civil process. He is under the control and direction of the sovereign, and must be considered as ready to obey his commands legally communicated through his courts.

It is true that in point of fact, cruisers are often commanded by men who do not feel a due respect for the laws, and who are not of sufficient responsibility to compensate the injuries their improper conduct may occasion; but in principle they must be considered as officers commissioned by their sovereign to make a seizure in the particular case, and to be ready to obey the legitimate mandate of the sovereign directing a restitution. The property, therefore, may be restored while lying in a neutral port; and whether it may or may not be sold in the neutral port, the condemnation without a sale may change the property, if such condemnation be valid.

In cases of prize of war, then, the difficulty of executing the sentence does not seem to afford any conclusive argument against the jurisdiction of the court of the captor, over a vessel in possession of the captor, but lying in a neutral or friendly port.

Do the same principles apply to a seizure made within the territory of a state, for the violation of its municipal law?

In the solution of this question the Court can derive no aid from precedent. The case perhaps has only occurred in the wars which have been carried on since the year 1793, and the

court in deciding it finds itself reduced to the necessity of reasoning from analogy.

The seizure, it has been already observed, vests the possession in the sovereign of the captor, and subjects the vessel to the jurisdiction of his courts. The vessel when carried into a foreign port is still in his possession, and he is as capable of restoring it, if the offence should not have been committed, as he is of restoring a neutral vessel unjustly captured as an enemy. The sentence in the one case may be executed with as much facility as in the other.

Possession of the *res* by the sovereign has been considered as giving the jurisdiction to his court; the particular mode of introducing the subject into the court, or, in other words, of instituting the particular process, which is preliminary to the sentence, is properly of municipal regulation, uncontrolled by the law of nations, and therefore is not examinable by a foreign tribunal. It would seem, then, that the principles, which have been stated as applicable in this respect to a prize of war, may be applied to a vessel rightfully seized for violating the municipal laws of a nation, if the sovereign of the captor possess the same right to maintain his possession against the claim of the original owner, in the latter as in the former case. If a libel be filed by the original owner in the courts of the country into which the vessel might be brought, the possession could be defended by alleging that she was seized for the violation of a municipal law, and the right of the court to decide the cause would be thereby defeated, then that possession would seem to be sufficiently firm to maintain the jurisdiction of the courts of the captor.

Upon this point much doubt has been entertained. It is, however, the opinion of a majority of the judges, that a possession thus lawfully acquired, under the authority of a sovereign state, could not be devested by the tribunals of that country into whose ports the captured vessel was brought; at least, that it could not be devested unless there should be such obvious delay in proceeding to a condemnation as would

justify the opinion, that no such measure was intended, and thus convert the seizure into a trespass.

The judgment of the Circuit Court is to be reversed.

CHASE and LIVINGSTON, *Justices*, dissented from the opinion of the Court in these cases,* because the vessel which was seized, for the violation of a *French arrêt*, or municipal regulation, was not brought into any port of *France* for trial; but was voluntarily carried by the captain of the privateer to *St. Jago de Cuba*, a *Spanish* port; and while lying there, was with her cargo condemned, as forfeited, by a *French* tribunal sitting at *St. Domingo*.

JOHNSON, *Justice*. I concur in the reversal of the decision in the Court below, but on different grounds from those which influence the opinion of my brethren. I had occasion, in the case of the *Sarah*, to express my ideas on most of the points arising in this case, and to that opinion I refer, for the reasons of my present conclusion.

To me it appears immaterial, whether the capture were made in exercise of municipal or belligerent rights; or whether within the jurisdictional limits of *France*, where she is supreme, or beyond those limits and upon the high seas, where her authority is concurrent with that of every other nation. We find the property in possession of the captor, under authority derived from his sovereign, whose conduct cannot be submitted to our jurisdiction.

The modern practice of nations sanctions the condemnation of vessels lying in a foreign port; and that practice is not inconsistent with principle.

The plaintiff below has lost all remedy at law, and must look elsewhere for redress, if he have sustained an injury.

* Hudson et al v. Guestier. Lafont v. Bigelow and Proud.

Peter Lafont *v.* Bigelow and Proud.

THIS case cannot be distinguished in any respect from the case of *Hudson, Smith and Thomas against P. A. Guestier*, and consequently the judgment of the Circuit Court is to be reversed.

Supreme Court of the United States.

Appeal from the Circuit Court of South-Carolina.

Rose et al. *v.* Himely et al.

THERE were two points upon which this case was decided. 1st. Whether a condemnation in the court at *St. Domingo* could affect a vessel and cargo captured by a *French* privateer but carried into the island of *Cuba?* On this the Chief Justice and Judges *Washington*, *Johnson* and *Todd* thought that they were still *sub potestate* of the capturing power, and the condemnation was valid both on principle and the modern practice of nations. 2d. Whether a capture on the high seas, for a cause not sanctioned by the law of nations, could give jurisdiction to a prize court? On this question Judges *Cushing*, *Chase* and *Livingston* gave no opinion, as they thought themselves sanctioned in reversing the decree of the Circuit Court upon the first ground, although contrary to the opinion of the majority f the Court. The Chief Justice and Judge *Washington* thought that such a capture was a mere marine trespass and gave no jurisdiction to the prize court; but admitted, that if that Court had jurisdiction of the case, they could not look into the principles upon which it founded its decision. They also admitted, that if the capture of the vessel had been made in the exercise of belligerent rights, the decree below would have been correct; but contended that the *French* arrêts excluding other nations from trading with the Brigands, were mere municipal regulations; and a capture for that cause, on

the high seas, was contrary to the law of nations, and could give no jurisdiction to their courts.

Judges *Johnson* and *Todd* contended, that the Court of *St. Domingo* was as competent to decide a question relative to its own jurisdiction, or on the law of nations, as this or any other court; that a violation of the law of nations was what *gave* jurisdiction to that court instead of *taking it away*, since to redress such injuries was a principal object of its institution; that this capture was made in the exercise of belligerent rights; that the exclusion of foreign vessels from the island of *St. Domingo* was not a mere trade law, but expressly intended for the reduction of an enemy; that a state of war existed, in fact, between the *French* government and the revolters in the island, and had been officially announced to the world, and the right of seizing for trading with the revolters, claimed in a proclamation of *Petion;* that when a war exists within the territory of a nation, she may assert both her territorial and belligerent rights towards other nations; and in case of actual violation of either, the vessel continued *in delicto* until her return into a particular jurisdiction; that both *Great Britain* and the *United States* asserted this principle in their trade laws, &c. &c. The opinions of the Chief Justice and Judge *Johnson* were delivered as follows:

MARSHALL, *Chief Justice.* This is a claim for a cargo of coffee, which, after being shipped from a port in St. Domingo in possession of the Brigands, was captured by a *French* privateer, and was carried into *Barracoa*, a small port in the island of *Cuba* where it was sold by the captor. The cargo having been brought by the purchaser into the state of *South-Carolina* was libelled in the Court of Admiralty by the original *American* owner. The purchaser defends his title by a sentence of condemnation pronounced by a tribunal sitting in *St. Domingo*, after the property had been libelled in the Court of this country, and by an order of sale made by a person styling himself delegate of the *French* government of *St. Domingo* at *St. Jago de Cuba.*

The great question to be decided is,

Was this sentence pronounced by a court of competent jurisdiction? At the threshold of this interesting inquiry a difficulty presents itself which is of no inconsiderable magnitude. It is this:

Can this Court examine the jurisdiction of a foreign tribunal? The court pronouncing the sentence, of necessity, decided in favour of its jurisdiction, and if the decision were erroneous, that error, it is said, ought to be corrected by the superior tribunals of its own country, not by those of a foreign country.

This proposition can certainly not be admitted in its full extent. A sentence professing on its face to be the sentence of a judicial tribunal, if rendered by a self-constituted body, or by a body not empowered by its government to take cognizance of the subject which it had decided, could have no legal effect whatever. The power of the court there is, of necessity, examinable to a certain extent by that tribunal, which is compelled to decide, whether its sentence have changed the right of property. The power under which it acts must be looked into; and its authority to decide questions which it professes to decide must be considered. But although the general power by which a court takes jurisdiction of causes must be inspected, in order to determine whether it may rightfully do what it professes to do, it is still a question of serious difficulty, whether the situation of the particular thing on which the sentence has passed, may be inquired into, for the purpose of deciding whether that thing were in a state which subjected it to the jurisdiction of the court passing the sentence. For example, in every case of a foreign sentence condemning a vessel as prize of war, the authority of the tribunal to act, as a prize court, must be examinable. Is the question, whether the vessel condemned were in a situation to subject her to the jurisdiction of that court, also examinable? The question, in the opinion of the court, must be answered in the affirmative.

Upon principle it would seem that the operation of every judgment must depend on the power of the court to render that judgment, or in other words, on its jurisdiction over the subject-matter which it has determined. In some cases that jurisdiction unquestionably depends as well on the state of the thing as on the constitution of the court. If by any means whatever, a prize court should be induced to condemn, as prize of war, a vessel which was never captured, it would not

be contended that the condemnation operated a change of property. Upon principle then it would seem, that, to a certain extent, the capacity of the court to act on the thing condemned, arising from its being within or without their jurisdiction, as well as the constitution of the court, may be considered by that tribunal which is to decide on the effect of the sentence.

Passing from principle to authority, we find that in the courts of *England*, whose decisions are particularly mentioned, because we are best acquainted with them, and because, as is believed, they give to foreign sentences as full effect as are given to them in any part of the civilized world, the position that the sentence of a foreign court is conclusive, with respect to what is proper to decide, is uniformly qualified with the limitation, that in the given case it has jurisdiction of the subject-matter.

This general *dictum* is explained by particular cases.

The case of the *Flad Oyen*, 1 *Rob.* 114. was a vessel condemned by a belligerent court, sitting in a neutral territory. Consequently the objection to that sentence turned entirely on the default in the constitution of the court. The *Christopher*, 2 *Rob.* 173. was condemned while lying in the port of an ally; the jurisdiction of the court passing the sentence was affirmed, but no doubt seems to have been entertained at the bar, or by the judge himself, of his right to decide the question, whether a court of admiralty, sitting in the country of the captor, could take jurisdiction of a prize lying in the port of an ally. The decision of the tribunal of *Bayonne*, in favour of its own jurisdiction, was not considered as conclusive in the Court of Admiralty in *England;* but that question was treated as being perfectly open and as depending on the law of nations. The case of *Kialighet*, 3 *Rob.* 82. is of the same description with that of the *Christopher*, and establishes the same principle. In the case of *Hendrick* and *Maria*, 4 *Rob.* 35. Sir *William Scott* determined that a condemnation, by the court of the captor, of a vessel lying in a neutral port, was conformable to the practice of nations, and therefore valid; but in that case the right to in-

quire whether the situation of the thing, the *locus in quo*, did not take it out of the jurisdiction of the court, was considered as unquestionable.

The case of the *Comet*, 5 *Rob.* 255. stands on the same principles. The *Helena*, 4 *Rob.* 3. was a *British* vessel, captured by an *Algerine* corsair owned by the Dey, and transferred to a *Spanish* purchaser by a public act, in a solemn manner before the *Spanish* consul. The transfer was guaranteed by the Dey himself. The vessel was again transferred to a *British* purchaser, under the public sanction of the Judge of the Vice Admiralty Court of *Minorca*, after that place had surrendered to the *British* arms. On a claim in the Court of Admiralty, by the original *British* owner, Sir *William Scott* affirmed the title of the purchaser, but expressed no doubt of the right of the court to investigate the subject.

The manner, in which this subject is understood in the courts of *England*, may then be considered as established on uncontrovertible authority. Although no case has been found, in which the validity of a foreign sentence has been denied, because the thing was not within the ports of the captor, yet it is apparent, that the courts of that country hold themselves warranted in examining the jurisdiction of a foreign court, by which a sentence of condemnation has passed, not only in relation to the constitutional powers of the court, but also in relation to the situation of the thing on which those powers are exercised; at least so far as the right of the foreign court to take jurisdiction of the thing is regulated by the law of nations and by treaties. There is no reason to suppose that the tribunals of any other country whatever deny themselves the same power. It is therefore, at present, considered as the uniform practice of civilized nations, and is adopted by this Court as the true principle which ought to govern in this case.

In pursuing the inquiry then, whether the tribunal erected in *St. Domingo*, were acting on a case of which it had jurisdiction, when the *Sarah* was condemned, this court will examine the constitutional powers of that tribunal, the character in

which it acted, and the situation of the subject on which it acted.

Admitting that the ordinary tribunal erected in *St. Domingo* was capable of acting as a prize court, and also of taking cognizance of offences against regulations purely municipal, it is material to inquire, in which character it pronounced the sentence of condemnation, in the case now under consideration. In making this inquiry, the relative situation of *St. Domingo* and *France* must necessarily be considered.

The colony of *St. Domingo*, originally belonging to *France*, had broken the bond which connected her with the parent state, had declared herself independent, and was endeavouring to support that independence by arms. *France* still asserted her claim of sovereignty, and had employed a military force in support of that claim. A war *de facto* then unquestionably existed between *France* and *St. Domingo*. It has been argued that the colony having declared itself a sovereign state, and having thus far maintained its sovereignty by arms, must be considered and treated by other nations as sovereign in fact, and as being intitled to maintain the same intercourse with the world, that is maintained by other belligerent nations. In support of this argument, the doctrines of *Vattel* have been particularly referred to. But the language of that writer is obviously addressed to sovereigns, not to courts. It is for governments to decide whether they will consider *St. Domingo* as an independent nation; and until such decision shall be made, or *France* shall relinquish her claim, courts of justice must consider the ancient state of things as remaining unaltered, and the sovereign power of *France* over that colony as still subsisting.

It is not intended to say that belligerent rights may not be superadded to those of sovereignty. But admitting a sovereign who is endeavouring to reduce his revolted subjects to obedience, to possess both sovereign and belligerent rights, and to be capable of acting in either character, the manner in which he acts must determine the character of the act. If as a legislator he publish his law, ordaining punishments for cer-

tain offences, which law is to be applied by courts, the nature of the law, and of the proceedings under it, will decide whether it be an exercise of belligerent rights, or exclusively of his sovereign power, and whether the court, in applying this law to particular cases, acts as a prize court, or as a court enforcing municipal regulations.

Let the acts of the French government which relate to this subject be inspected.

The notification given by Mr. *Pichon*, the *French* charge des affaires to the *American* government, which was published in *March* 1802, interdicts all manner of intercourse with the ports of *St. Domingo*, in possession of the revolted negroes, and declares that cruisers will arrest all foreign vessels *attempting* to enter any other port, and to communicate with any of the revolted negroes, to carry either ammunition or provisions to them. Such vessels, he adds, shall be confiscated, and the commanders severely punished, as violating the rights of the *French* republic and the law of nations.

It might be questioned, under this notice, whether vessels sailing on the high seas, having traded with one of the Brigand ports, would be considered as liable to seizure and to confiscation, after passing the territorial jurisdiction of the government of *St. Domingo*. A free trade with that colony had been allowed, and the revocation of that licence is made known to the government of the *United States*. To its revocation, the ordinary rights of sovereignty were sufficient.

The notification, however, refers to the order of the commander in chief of the *French* republic in *St. Domingo*, and that order should of course be examined as exhibiting more perfectly the extent and nature of the rights which the *French* republic purposed to exercise.

The particular order which preceded this notification is in these words: "Every vessel, *French* or foreign, which shall be found by the vessels of the republic riding at anchor in the ports of the island not designated by these presents, or within the bays, creeks and landing places on the coast, or under sail at a less distance than two leagues from the coast

and communicating with the land, shall be forfeited." The next decree is dated the 22d of *June* 1802, and the extract, which is supposed to regulate this particular subject, is in these words: "Every vessel, *French* or foreign, which shall be found by the vessels of the republic, anchored in one of the ports of the island not designated by the present decree, or in the bays, coves or landings of the coast, or under sail at a distance less than two leagues from the coast and communicating with the land, shall be arrested and confiscated."

Nothing can be more obvious than that these are strictly territorial regulations, proceeding from the sovereign power of *St. Domingo*, and intended to enforce sovereign rights. Seizure for a breach of this law is to be made only within those limits, over which the sovereign claimed a right to legislate, in virtue of that exclusive dominion, which every nation possesses within its own territory, and within such a distance from the land as may be considered as a part of its territory. This power is the same in peace and in war, and is exercised according to the discretion of the sovereign. The prohibition and the penalty are the same on *French* and foreign vessels.

This subject was again taken up in *October* 1802, in an arrêt which in part regulates the coasting trade of the island. The 4th, 5th and 6th articles of this decree respect foreign as well as *French* vessels, and subject them to confiscation, in the cases which are there enumerated. These are all of the same description with those stated in the arrêt of the 22d of *June*, and no seizure is authorized but of vessels found within two leagues of the coast.

The last decree is that which was issued by general *Ferrand*, on the 1st day of *March* 1804. This deserves the more attention, because it is that on which the courts profess to found their sentence of condemnation in the particular case under consideration, and because general *Ferrand* uses expressions which clearly indicate the point of view in which all these arrêts were contemplated by the government of the island.

The title of this arrêt is "An Arrêt, relative to vessels taken in contravention of the dispositions of the laws and re-

gulations concerning *French* and foreign commerce, in the colony."

In stating the motives for this ordinance, it is said, "that some *French* agents, in the neighbouring and allied islands, had mistaken the application of the laws and regulations concerning vessels, taken in contravention upon the coasts of *St Domingo*, occupied by the rebels, and had confounded those prizes with those which were made upon the enemy of the state."

"Desiring to put an end to all the abuses which might result from this mistake, and which would be as injurious to the territorial sovereignty, as to the rights of neutrality," the commander in chief, after some further recitals, which are not deemed material, ordains the law under which the tribunals have proceeded.

The distinction, between seizures made in right of war and those which are made for infractions of the commercial regulations, established by the sovereign power of the state, is here taken in terms; and that legislation, which was directed against vessels contravening the laws and regulations concerning *French* and foreign commerce in the colony, is clearly of the latter description.

The first article of this ordinance is recited in the sentence, as that on which the condemnation was founded. It is in these words: "The port of *St. Domingo* is the only one in the colony of *St. Domingo*, that is open to the *French* and foreign commerce; in consequence, all vessels anchored in the bays, harbours and landing-places on the coast occupied by the rebels, those cleared for the ports in their possession coming out with or without a cargo, and generally all vessels sailing in the territorial extent of the island, (except that from Cape *Raphael* to *Ocoa* Bay) found at a distance less than two leagues from the coast, shall be retained by the state vessels and privateers having out letters of marque, who shall conduct them, if possible, into the port of *St. Domingo*, that the confiscation of the said vessels and cargoes may be pronounced."

As this article authorizes a seizure of those vessels only which are "sailing within the territorial extent of the island, found within less than two leagues of the coast," it is deemed by the Court to be sufficiently evident that the seizure and confiscation are made in consequence of a violation of municipal regulations and not in right of war. It is true that the revolt of the colony is the motive for this exercise of sovereign power. Still it is an exercise of sovereign power restricting itself within those limits which are the province of municipal law, not the exercise of a belligerent right.

The tribunal professing to carry this law into execution, though capable of sitting either as a Prize or an Instance Court, must be considered in this case, as acting in the character of an Instance Court, since it is in that character that it punishes violations of municipal law.

The *Sarah* was captured more than ten leagues from the coast of *St. Domingo*, was never carried within the jurisdiction of the tribunal of that colony, was sold at *Baracoa* in the island of *Cuba*, and afterwards condemned as prize under the arrêt of general *Ferrand* which has been stated.

If the court of *St. Domingo* had jurisdiction of the case, its sentence is conclusive. If it had no jurisdiction, the proceedings are *coram non judice*, and must be disregarded.

Of its own jurisdiction, so far as it depends on municipal rules, the court of a foreign nation must judge, and its decisions must be respected. But if it exercise a jurisdiction which, according to the law of nations, its sovereign could not confer, however available its sentences may be within the dominions of the prince from whom the authority is derived, they are not regarded by foreign courts. This distinction is taken upon this principle, that the law of nations is the law of all tribunals in the society of nations, and is supposed to be equally understood by all.

Thus the sentence of a court, sitting in a neutral territory and instituted by a belligerent, has been declared not to change the property it professed to condemn; and thus the question, whether a prize court sitting in the country of the captor could

condemn property lying in a neutral port, has been freely examined; and although the jurisdiction of the court in such case was admitted, yet no doubt appears to have been entertained of the propriety of examining the question, and deciding it according to the practice of nations.

Since courts which are required to decide, whether the condemnation of a vessel and cargo by a foreign tribunal have effected a change of property, may inquire whether the sentence were pronounced by a court which, according to the principles of national law, could have jurisdiction over the subject, this court must inquire whether, in conformity with that law, the tribunal sitting at *St. Domingo* to punish violations of the municipal laws enacted by its sovereign, could take jurisdiction of a vessel seized on the high seas for infracting those laws, and carried into a foreign port.

In prosecuting this inquiry, the first question which presents itself to the mind is, what act gives an inchoate jurisdiction to a court?

It cannot be the offence itself. It is repugnant to every idea of a proceeding *in rem*, to act against a thing which is not in the power of the sovereign under whose authority the court proceeds; and no nation will admit that its property should be absolutely changed, while remaining in its own possession by a sentence which is entirely *ex parte*. Those on board a vessel are supposed to represent all those who are interested in it, and if placed in a situation which requires them to take notice of any proceedings against a vessel and cargo, and enables them to assist the rights of the interested, the cause is considered as being properly heard, and all concerned are parties to it. But the owners of vessels navigating the high seas or lying in port, cannot take notice of any proceedings which may be instituted against those vessels in foreign countries; and consequently such proceedings would be entirely *ex parte*, and a sentence founded on them never would be, and never ought to be regarded.

The offence then alleged to have been committed by the *Sarah* could not be cognizable by the Court of *St. Domingo*,

until some other act were performed, which should make the owners of the vessel and cargo parties to the proceedings instituted against them, and should place them within the legitimate power of the sovereign, for the infraction of whose laws they were to be confiscated. There must be a seizure in order to vest the possession or the thing in the offended sovereign, and enable his courts to proceed against it. This seizure, if made either by a civil officer or a cruiser, acting under the authority of the sovereign, vests the possession in him, and enables him to inquire by his tribunals constituted for the purpose, into the allegations made against and in favour of the offending vessel. Those interested in the property which has been seized are considered as parties to this inquiry; and all nations admit that the sentence, whether correct or otherwise, is conclusive. Will a seizure *de facto*, made without the territorial dominion of the sovereign under cover of whose authority it is made, give a court jurisdiction of a thing never brought within the dominion of that sovereign?

This is a question on which considerable difficulty has been felt, and on which some contrariety of opinion exists. It has been doubted whether proceedings denominated judicial are in such a case merely irregular or are to be considered as absolutely void, being *coram non judice*. If merely irregular, the courts of the country pronouncing the sentence were the exclusive judges of that irregularity, and their decision binds the world; if *coram non judice* the sentence is as if not pronounced.

It is conceded that the legislation of every country is territorial; that beyond its territory it can only effect its own subjects or citizens. It is not easy to conceive a power to execute a municipal law, or to enforce obedience to that law, without the circle in which that law operates. A power to seize for the infraction of a law is derived from the sovereign, and must be exercised, it would seem, within those limits which circumscribe the sovereign power. The rights of war may be exercised on the high seas, because war is carried on upon the high seas; but the pacific rights of sovereignty must be exercised within the territory of the sovereign.

If these propositions be true, a seizure of a person not a subject, or of a vessel not belonging to a subject, made on the high seas for the breach of a municipal regulation, is an act which the sovereign cannot authorize. The person who makes this seizure there, makes it on a pretext, which if true, will not justify the act; and he is a marine trespasser. To a majority of the Court it seems to follow that such a seizure is totally invalid; that the possession acquired by the unlawful act is his own possession, not that of the sovereign; and that such possession confers no jurisdiction on the court of the country to which the captor belongs.

This having been the fact in the case of the *Sarah*, and neither the vessel nor captain, supercargo nor crew having ever been brought within the jurisdiction of the court or within the dominion of the sovereign whose laws were infracted, the jurisdiction of that court over the subject of its sentence never attached, the proceedings were entirely *ex parte*, and the sentence is not to be regarded.

The case of the *Helena* already cited may, at first view, be thought a case which would give validity to any seizure whereever made, and would refer the legality of that seizure solely to the sovereign of the captor. But on a deliberate consideration of that case, the majority of the court is of opinion, that this inference is not warranted by it. Several circumstances were concerned in producing the decision which was made, and those circumstances vary that case materially from this.

The captured vessel was carried into port, and, while in the power of the sovereign, was transferred by his particular authority in solemn form. In such a case Sir *William Scott* conceived, that a sentence of confiscation conformably with the laws of *Algiers* was to be presumed. But his decision did not turn singly on this point. The vessel, after passing in this formal manner to a *Spanish* purchaser, had, with equal solemnity, been again transferred to a *British* purchaser; and the judge considered this second purchaser, with how much reason may perhaps be doubted, as in a better situation than the original purchaser.

This case is badly reported; the points made by counsel on one side are totally omitted; and the opinion of the judge is not given with that clearness which usually characterizes the opinions of Sir *William Scott*. But the seizure was presumed to be made by way of reprisal for some breach of the treaty between the two powers; so that the possession of the captor was considered as legitimately the possession of his sovereign; and from the subsequent conduct of the Dey himself, a condemnation according to the usages of *Algiers* was presumed. But in presuming a condemnation, this case does not, it is thought, dispense with the necessity of one; nor is it supposed, in presuming a legitimate cause of seizure, to declare that a seizure made without authority by a commissioned cruiser, would vest the possession in the sovereign of the captor, and give jurisdiction to his courts.

If this case is to be considered as if no sentence of condemnation were ever pronounced, the property is not changed; and this court, having no right to enforce the penal laws of a foreign country, cannot inquire into any infraction of those laws. The property in this particular case was purchased under circumstances which exclude any doubt respecting its identity, and respecting the full knowledge of the purchaser and of the nature of the title he acquired.

The sentence of condemnation being considered as null and invalid, the property is unchanged, and therefore ought to be recovered by the libellants in the Court below. But those libellants ought to account with the defendants for the freight, insurance and duties on importation, and for such other expenses as would have been properly chargeable on themselves as importers; and each party is to bear his own costs.

The sentence of the Circuit Court is reversed, and also the sentence of the District Court so far as it contravenes this opinion; and the cause is to be remanded to the Circuit Court for the district of *South Carolina* for a final decision thereon.

LIVINGSTON, *Justice*.—Without expressing an opinion on the invalidity of the seizure on the high seas, under a munici-

pal regulation, if the property be immediately carried into a port of the country to which the capturing vessel belongs, and there regularly proceeded against, I concur in the judgment just delivered; because the *Sarah* and her cargo were condemned by a *French* tribunal sitting at *St. Domingo*, without having been carried into that or any other *French* port, and while lying in the port of *Charleston*, *South Carolina*, whither they had been carried by and with the consent of the captor.

JOHNSON, *Justice.* This cause comes up on appeal from the Circuit Court of *South Carolina*, acting in the capacity of an Instance Court of Admiralty. The doctrines which regulated the decision of the Circuit Court are not overruled by a majority of the Bench; but the decree of that court is rescinded, because, to three of the five judges who concur in sustaining the appeal, it appears that the property could not be condemned in the court of *St. Domingo*, while lying in a neutral port, and to the other two, that the capture on the high seas, for a breach of a municipal regulation, was contrary to the law of nations, and, therefore, vested no jurisdiction in the Court of *St. Domingo*. On the former doctrine it is not necessary to make any observations, because in the case of the *Sea-Flower*, argued together with this as one cause, and decided on the same day, that doctrine is expressly overruled. But on the latter point, I think it proper briefly to state the reasons upon which I found my disapprobation, both of the doctrine and its application to this case.

It would have been some relief to us, in determining this question, had it been made a point by counsel, either in their argument in this Court, or in the Court below; but it appears to have been wholly unnoticed by them.

Most of the difficulties, which have occurred in the investigation of this case, appear to have resulted from an indistinct view of the nature, origin and object of Prize Courts. Conducted by the same forms, and very generally blended in the same persons, it is not easy to trace upon the mind the discriminating line between the Instance and Prize Courts; yet the

object of the institution of the latter court, when considered, strongly marks the distinguishing point between them. In its ordinary jurisdiction the Admiralty takes cognizance of mere questions of *meum* and *tuum* arising between individuals. Its extraordinary or prize jurisdiction is vested in it for the purpose of revising the acts of the sovereign himself, performed through the agency of his officers or subjects. A seizure on the high seas by an unauthorized individual is a mere trespass, and produces no change of right, but such a seizure made by a sovereign authority vests the thing seized in the sovereign; for the fact of possession must have all the beneficial effects of the right of possession, as the justice or propriety of it cannot be inquired into by the courts of other nations. But as this principle might leave the unoffending individual a prey to the rapacity of cruisers, or a victim to the errors of those who even mean well, and as every civilized nation pretends to the character of justice and moderation, and to have an interest in preserving the peace of the world, they constitute courts with powers to inquire into the correctness of captures made under colour of their own authority, and to give redress to those who have been unmeritedly attacked or injured. These are denominated Prize Courts, and the primary object of their institution is to inquire whether a taking as prize be sanctioned by the authority of their sovereign or the unauthorized act of an individual. From this it would seem to follow, that the decision of such a court is the only legal organ of communication, through which the sanction of a sovereign can be ascertained; and that no other court is at liberty to deny the existence of sovereign authority for a seizure which a prize court has declared to be the act of its sovereign.

The propriety of such an act may correctly become the subject of executive or diplomatic discussion; but the equality of nations forbids that the conduct of one sovereign, or the correctness of the principles upon which he acts, should be submitted to the jurisdiction of the courts of another. From these considerations I infer, that the capture and continued possession of the *Sarah* and her cargo, confirmed by the approba-

tory sentence of a court of the capturing power, vested a title in the claimant which this Court cannot, consistently with the law of nations, interpose its authority to defeat.

Having briefly stated the grounds upon which I originally formed, and now adhere to an opinion in favour of the claimants, I will consider the objections stated to the jurisdiction of the Court, on the ground that the seizure was contrary to the law of nations.

It is admitted, if the Court of *St. Domingo* had jurisdiction of the subject matter, that the condemnation completed the divestiture of property. But it is contended that the subject, in this case, was not within the jurisdiction, because it was seized for a cause not sanctioned by the law of nations. I am unfortunate enough to think, that neither the premises nor the conclusion of this argument is maintainable. The conclusion is subject to this very obvious objection, that it defeats the very end for which such courts were created.

To contend that a violation of the law of nations will take away the jurisdiction of a court which sits and judges according to the law of nations, appears to approach very near to a solecism.

The occurrence which gives it jurisdiction, takes it away. If the object and end of constituting a Prize Court be to give redress against unlawful capture, and, as the books say, in such case to restore, *velis levatis*, how can it make reparation to the injured individual, if it lose its jurisdiction. Because there has been an injury done to him, the court can give him no redress. The argument admits that a capture, consistent with the law of nations, would give jurisdiction; but how is the legality or illegality of a capture to be determined, unless a court can take jurisdiction of the case? The legality of the capture is the very point to which a Court is to direct its inquires, and yet that inquiry is arrested in its inception. The cause or circumstance of a capture can never be known to a Court without exercising jurisdiction on the subject. To maintain, therefore, that Prize Courts can only exercise jurisdiction over captures made consistently with the law of nations, is, in effect, to deprive them

of all jurisdiction, since it leaves no means of deciding the question on which their jurisdiction rests. But the premises which lead to this conclusion will be found to be no less exceptionable than the conclusion itself; and the propriety of taking into consideration the questions which form these premises is very questionable. The opinion of those of my brethren who maintain this doctrine is founded upon two propositions.

1st. That a nation cannot capture on the high seas a vessel which has within her territories committed a breach of a municipal law.

2d. That the condemnation in this case was grounded on an offence against a municipal law.

To me it appears wholly immaterial on what grounds the decision is founded, if the case be within their jurisdiction. Indeed this is fully admitted by those of the court who maintain the doctrine that I am considering; but under the idea of examining the jurisdiction of the court, they appear to me to go further and examine into the correctness of its decision. I do not deny that there are circumstances material to the effect of sentences of foreign prize courts, into which other courts may inquire. The authorities quoted on this point relate exclusively to two, viz.

1st. Whether the court be held in the territory of the sovereign who constitutes it.

2d. Whether the subject was *sub potestate* of the sovereign whose courts condemned it.

These circumstances have an immediate relation to the existence of the court, and of its power of acting upon the subject; but within its legitimate scope of action, the correctness of its proceedings or of the rules of decision by which it is governed, cannot, in the nature of things and consistently with the idea of perfect equality and independence, be subjected to the review of other courts.

The decisions of such courts do not derive their effect from their abstract justice; they are in this respect analogous to the acts of sovereignty. They are universally conclusive because no where subject to revision. Among nations they are consi-

dered as intitled to the same validity as the decisions of municipal courts within their respective territories, and preclude the rights of parties, although contrary to every idea of law, reason and evidence.

The Court of *St. Domingo*, being a court of coordinate authority with this, was equally competent to decide a question of jurisdiction arising under the law of nations. Had the question, whether a seizure, under a municipal law, upon the high seas, were contrary to the law of nations, or if contrary to that law, whether the Court could not therefore exercise jurisdiction upon it, been brought to the notice of that Court, it is presumed that their decree would not have been void, because they maintained the negative of the proposition. Had it been a question before that Court, whether the laws of *France* authorized the capture of the *Sarah* at ten leagues distance from the coast, or whether in fact the vessel were not seized within two leagues of the coast, it is presumed that their decision upon these points, would have been conclusive, whatever may be the impression of this Court from the evidence now before us. It is impossible for this Court to pretend to a knowledge of all the facts by which the decree of that Court may have been regulated. The decree itself shows that the whole evidence is not before us; but if it were, that Court is sole arbiter both of the effect of testimony, and the credibility of witnesses. A similar observation may be made with regard to the laws of *France*, which, much pains has been taken to prove, did not authorize this capture. How can this Court be supposed to know all the laws, sovereign orders or received principles which regulate the decisions of foreign courts? Such courts are best acquainted with the laws of their own government, and their decisions upon the existence or effect of those laws must, in the nature of things, be conclusive in the eyes of other nations. Suppose that other courts were so far at liberty as to review the grounds upon which such decrees *profess* to proceed, the insufficiency of those grounds would not be conclusive against the correctness of such decisions, because they may be maintainable upon other grounds,

not noticed, or even not known to the judges who pronounce them.

But if we are to look into the grounds upon which a decree is professedly founded, extravagant as that upon the case of the *Sarah* is said to be, there is one view in which it may admit of justification. General *Ferrand* in his preamble declares it to be his leading object to remove the contrariety of opinion which existed among the officers of government relative to existing laws respecting captures of vessels taken upon the coasts of *St. Domingo*. If their Judges thought proper to consider this arrêt as only declaratory of pre-existing laws, and that the words in the first article, "*ceux expediè pour les portes en leur possession en sortant avec ou sans chargement*," authorized the capture of the vessel outward bound, I know no reason that *we* can have to declare it a misconstruction or incorrect opinion, or, if incorrect, to nullify their decree on that account. The conclusiveness of a foreign sentence appears to be at an end, the moment other courts undertake to look into the cause for which a capture was made. If the possession of the captor be the possession of his sovereign, and his courts have a right therefore to adjudicate property captured, or carried into a foreign port, it appears to me to be immaterial on what ground the capture is made. The fact of dispossession by sovereign authority, judicially ascertained, deprives all other courts of the right to act upon the case.

Upon these considerations I have adopted the opinion, that we are not at liberty to enter into the inquiry, whether the capture of the *Sarah* were made in pursuance of belligerent or municipal rights. But if we are to enter into the inquiry, I am of opinion that the evidence before us plainly makes out a case of belligerent capture, and, though not so, that the capture may be justified, although for the breach of municipal law.

In support of my latter position, both *principle* and the practice of *Great Britain* and our own government may be appealed to. The ocean is the common jurisdiction of all sovereign powers; from which it does not result that their powers upon the ocean exist in a state of suspension or equipoise, but that

every power is at liberty upon the ocean to exercise its sovereign right, provided it do no act inconsistent with that general equality of nations which exists upon the ocean. The seizure of a ship, upon the high seas, after she has committed an act of forfeiture, within a territory, is not inconsistent with the sovereign rights of the nation to which she belongs, because it is the law of reason, and the general understanding of nations, that the offending individual forfeits his claim to protection, and every nation is the legal avenger of its own wrongs. Within their jurisdictional limits, the rights of sovereignty are exclusive; upon the ocean they are concurrent. Whatever the great principle of self-defence, in its reasonable and necessary exercise, will sanction in an individual in a state of nature, nations may lawfully perform upon the ocean. This principle, as well as most others, may be carried to an unreasonable extent: it may be made the pretence instead of the real ground of aggression, and then it will become a just cause of war. I contend only for its reasonable exercise. The act of *Great Britain* of the 24 *Geo.* 3. 6. 47. is predicated upon these principles. It subjects vessels to seizure which approach with certain cargoes on board within the distance of four leagues of her coast, because it would be difficult, if not impossible to execute her trade laws if they were suffered to approach nearer in the prosecution of an illicit design. But if they have been within that distance, they are afterwards subject to be seized on the high seas. They have then violated her laws, and have forfeited the protection of their sovereign. The laws of the *United States* upon the subject of trade appear to have been framed in some measure after the model of the *English* statutes; and the 29th section of the act of 1799 expressly authorizes the seizure of a vessel that has, within the jurisdiction of the *United States*, committed an act of forfeiture, wherever she may be met with by a revenue cutter, without limiting the distance from the coast. So also the act of 1806, for prohibiting the importation of slaves authorizes a seizure beyond our jurisdictional limits, if the vessel be found with slaves on board hovering on the coast; a latitude of expression, that can only

be limited by circumstances and the discretion of a court, and in case of fresh pursuit would be actually without limitation. Indeed after passing the jurisdictional limits of a state, a vessel is as much on the high seas, as if in the middle of the ocean; and if *France* could authorize a seizure at the distance of two leagues, she could at the distance of twenty.

But the capture of the *Sarah* may fairly be considered as an exercise of belligerent right, and strictly analogous to seizure for breach of blockade. The right of one nation to exclude all others from trading with her territories exists equally in war and in peace. Had the exclusion in this case been merely calculated for the interests of trade, it may have been considered as purely municipal. But there existed a war between the parent state and her colony. It was not only a fact of the most universal notoriety, but officially notified in the gazettes of the *United States*, by the proclamation of the *French* resident Mr. *Pichon*, who at the same time published the prohibition to trade with the revolters, with a declaration that seizure and confiscation should be the consequence of disobedience to this prohibition. Here, then, was notice of the existence of war, and an assertion of the rights consequent upon it. The object of the measure was not the promotion of any particular branch of agriculture, manufacture or commerce, but solely the reduction of an *enemy*. It was therefore not merely municipal, but belligerent in its nature and object. If *France* had a right to subdue the revolted colony, she had an undoubted right to preclude all nations from supplying them with the means of protracting the war. To confine her to her own jurisdictional limits, in the exercise of those acts of force which were necessary to carry into effect her right of excluding neutrals, would be a mere mockery, when, by the very state of things, she was herself shut out from the limits. Seizure on the high seas for a breach of the right of blockade, during the whole return voyage, is universally acquiesced in, as a reasonable exercise of sovereign power. The principle of blockade has, indeed, in modern times, been pushed to such an extravagant extent, as to become a very justifiable cause of war, but still it

is admitted to be consistent with the law of nations when confined within the limits of reason and necessity. The right to subdue an enemy carries with it the right to make use of the necessary means for that purpose; and the individual, who does an act inconsistent with the rights of a belligerent, exposes himself to the liability of being treated as an enemy. The belligerent nation can exercise the same acts of violence against him, that she can against an individual of her enemy. Nor can his sovereign protect an individual, who has committed an aggression upon belligerent rights, without becoming a party in the contest.

The argument, drawn from the decree of *Ferrand* to prove that *France* had not asserted her belligerent rights, is evidently founded upon a mistranslation. The sentence, which authorizes the seizure of vessels when outward bound after having entered the ports of *St. Domingo*, is *substantive* and totally unaffected by the subsequent sentence, which authorizes a seizure of vessels sailing within two leagues of the coast. The former authorizes capture for the offence of having entered those ports, the latter for being found in a situation from which an intention to commit that offence shall be inferred. Nor, if the fact were *so*, that she had limited the right of capture, to two leagues from her coast, would it follow that this was an exercise of municipal right; because a nation may restrict her subjects in the exercise of belligerent rights, to a certain distance from the coast, or even to her jurisdictional limits, and yet the character of the seizure would be in no wise changed. If the object of the seizure be to promote the reduction of an enemy, it is an exercise of the rights of war.

From these considerations I conclude, that the capture of the *Sarah* was justifiable upon principles not at all dependent upon municipal regulations; that it may fairly be considered as having been made in conformity with the law of nations; and therefore, without acceding to the doctrine that a seizure contrary to the law of nations was a void seizure, and that we have a right to declare that a mere marine trespass, which a court of *France* has declared to be the act of its sovereign,

I conclude that the Court of *St. Domingo* had jurisdiction in this case; and if it had jurisdiction, it is admitted that the property was altered, and the libellant ought not to recover.

Let it be observed, that this is not an application on behalf of the vendee of the captor for the aid of this court, to secure to him the benefit of his purchase. We find him in possession, and the application is for our aid to devest that possession and restore it to the original owner. This owner was clearly an offender against the rights of *France*, and his only claim upon the interference of this court is that he had escaped with the property thus acquired, beyond two leagues from the shore of the nation that he had offended. In such a case, it would be enough for all the purposes of the defendant, if this Court would imitate the state of our nation and remain neutral between the parties.

Let it not be supposed that the opinion which I am giving devotes the commerce of our country to lawless depredation: my observations are applied to a case in which an evident aggression has been committed, by entering at least two of the interdicted ports of *St. Domingo*. The individual, who will knowingly violate the rights of war or laws of trade of another nation, is well apprised that he forfeits all claim to the protection of his country, or the interference of its courts. The peace of the nation and the interests of the fair trader imperiously require, that the smuggler or the violater of neutrality should be left to his fate.

If I had no other reason to satisfy my mind of the correctness of the doctrines that I have been contending for, a conviction of their importance to the peace and security of the mercantile world would alone induce me to maintain them.

The purchase of these goods was made in a *Spanish* port, under sanction of an agent of the *French* government, apparently countenanced by the government of the country in which he acted, and is sanctioned by a condemnation. If, in the purchase of articles of merchandize in a foreign port, under the sanction of sovereign authority, it be nevertheless necessary, in order to acquire a good property, that a merchant

should know whether they were captured by law or without law, under the law of nations or under municipal law, the office of a lawyer will be as necessary to his education as the compting house. Articles of commerce, passing from hand to hand by mere delivery, after remaining for years in the same packages, distinguished by the same marks, may admit of identification after any length of time, in the remotest countries and in the hands of the most innocent purchasers. But if a seizure by a sovereign, upon a ground which any court may adjudge unsanctioned by the law of nations, be tantamount to no seizure, and nothing done in pursuance of it can transfer a good property, where is the uncertainty to end? With regard to ships, the inconvenience may not be so great. Every merchant knows that a vessel must be accompanied with her document papers, so that the purchaser may come to the knowledge of her having passed through a capture and condemnation, and be put on his guard against so precarious a title. He will know that he is liable to be dispossessed according to the varying constructions of the law of nations that may prevail in different countries; yet he knows the full value of a property thus embarrassed. But in the purchase of merchandize he has no security, unless indeed he purchase it immediately from the manufacturer or the planter. It is a subject of curious speculation, how far the pursuit or research after merchandize thus situated may be carried; whether the same principle may not extend it into the hands of the retailer or even the consumer. In one of the cases arising out of the capture of the *Sarah*, I mean that against *Groening*, the property is libelled in the hands of a purchaser without notice, after it was landed in this country. If we can go so far, I see not where we are to stop. Every subsequent purchaser, even the remotest, as far as the article will admit of identification, is in no better situation than the defendant *Groening*, and is liable upon the same principle to be dispossessed.

After going beyond the fact of seizure by sovereign authority within his own territory (where he is supreme), or upon the ocean (where he is equal to all others), unaffected by es-

cape, recapture or release (by which property is restored to its state before seizure), the approbatory sentence of his own court (by which alone it can be judicially known to be the act of the sovereign)—beyond these limits every step that a court takes can only be productive of doubt, litigation and uncertainty, and involve the commercial world in endless embarrassment, at the same time that it compromits the peace of nations; among whom it is a received and correct opinion, that a want of due deference to the jurisdiction of their maritime courts is a just cause of war.

Circuit Court of Pennsylvania.

OCTOBER SESSIONS, 1807.

BEFORE JUDGES WASHINGTON AND PETERS.

George Scriba *v.* North American Insurance Company.

INSURANCE. If the risk contemplated in a policy do not commence, there is no contract, and the premium, which is the price of the risk, must be returned.

ACTION on the case for a return of premium. The facts were substantially as follow: The plaintiff, being owner of the cargo of the schooner *Alert*, on a voyage from *New-York* to *La Vera Cruz*, caused insurance to be made thereon to its full value by several policies, some on the outward voyage only, others out and home. The outward policies contained the usual clause, "beginning the risk at and from," &c. "and so to continue and endure until the vessel arrive at *La Vera Cruz*, and the said goods be there safely landed," &c. The *Alert* sailed from *New-York* on her said voyage in *August* 1801, and on the 7th of *October* following the plaintiff made a written application to the defendants for insurance on the home-

ward cargo, stating that she had left *New-York* on the 14th of *August* preceding, since which no accounts had been received of her, and describing her as having been then in complete order and in all respects fitted for the intended voyage. The defendants accordingly by policy, dated 9th *October* 1801, made insurance on the cargo of the *Alert*, for the sum of $ 15,000, "*at and from La Vera Cruz to New-York, with liberty to touch "and trade at the Havanna or New-Orleans*," at a premium of twelve and a half per cent. to return five if she should come direct from *La Vera Cruz* without touching at the *Havanna* or *New-Orleans*, and should arrive safe.

The *Alert* was twice captured on her outward passage. Her hatches were broken open, and almost every box and package in her hold forced by the crew of the former of the capturing vessels, under the pretence of searching for contraband. By the other, she was carried into Jamaica, and being liberated after trial and a detention of nearly two months, she proceeded with the same cargo on her voyage towards *La Vera Cruz*, during which she experienced heavy gales, and was injured in her masts and rigging. On the 5th of *December* she arrived and let go her anchor outside the fort and harbour of *La Vera Cruz*, but after a stay there of a few hours, was ordered by the governor to get under weigh immediately and proceed to sea; and was compelled so to do, not being permitted to land any part of her cargo, nor to take any thing from the shore. She then proceeded for *New-Orleans*, that being the nearest port she could reach, where she arrived on the 24th of the same month.

The plaintiff, having received information of her arrival at *New-Orleans* from the supercargo, who expressed an intention of proceeding thence to the *Havanna* in search of a market, so soon as the necessary repairs should be done to the vessel, applied to the defendants on the 11th of *February* 1802, for permission to touch and trade at the *Havanna*. This permission was granted and the following clause added to the policy, viz: "*It being represented by the assured that the abovenamed "schooner Alert has arrived at New-Orleans from La Vera "Cruz, it is agreed at their request and in consideration*

"*of a half per cent. additional premium, that she may proceed* "*from New-Orleans to the Havanna and thence to New-York* "*without prejudice to this insurance.*" It having been however ascertained that the port of the *Havanna* was shut against *American* vessels before the *Alert* had left *New Orleans*, she did not proceed thither as was intended, but having unladen the cargo she had brought from *La Vera Cruz* (being the same she had carried from *New-York*) she took on board a cargo of cotton of the value of about $9,000, with which she proceeded directly to *New-York* where she arrived in safety. It appeared that the value of the cargo of cotton was fully covered by prior policies on the homeward risk, if they attached at all.

Upon these facts it was contended by *Meredith* and *Tilghman* for the plaintiff, that by the express terms of the contract, the risk on the outward policies was to continue until the arrival of the *Alert* at *La Vera Cruz*, and the goods should be safely landed: that if they ceased on the arrival at *La Vera Cruz*, (the entry of the vessel and the landing of the cargo being prevented by an interdiction of commerce) the risk was thrown on the plaintiff: that to say the homeward risk attached to the cargo carried from *New York* to *La Vera Cruz* would be alike contrary to the express terms of the contract, and to the meaning and intention of the parties, neither of whom could ever have contemplated the return of the cargo shipped at *New-York:* that it was implied in every contract of insurance, and indispensable to its being obligatory on the insurer, that the ship at the commencement of the risk insured shall be fitted in all respects for the intended voyage, and that the goods shall be in good order and properly laden: that in this case, by occurrences, not known to the insured and therefore not communicated to the insurer at the date of the policy, neither vessel nor cargo were in such situation as by the implied contract would be necessary to bind the underwriter, of whom no indemnity could have been recovered, had a loss happened. With respect to the cargo shipped at *New-Orleans* it was contended, that if the homeward policies could be considered as attaching to it,

the prior policies of that description were sufficient to cover it; and that the permission to go to the *Havanna*, could have no effect, because evidently applied for and granted under a mistaken opinion on both sides, that the homeward policies had attached, and the premium been earned: that this mistake would have protected the underwriter from liability for a loss, and ought not to defeat the plaintiff's claim to a return of premium.

On the other hand it was contended by *Hopkinson* and *Ingersoll* for the defendants, that the outward risk ceased and the homeward risk began at the moment the *Alert* cast anchor at *La Vera Cruz*, the homeward policies being "*at and from*" *La Vera Cruz:* that no chasm was contemplated by the parties who evidently intended that the homeward policies should attach the moment the outward policies ceased: that at all events the application for permission to go to the *Havanna*, made by the plaintiff after a knowledge of all the previous circumstances of the voyage, and granted by the defendant, was an admission on both sides that the risk should be considered as having attached, and conclusive upon the parties: that it would have subjected the underwriter to a loss had one taken place, and therefore he had earned the premium. Some reliance too seemed to be placed on the plaintiff's not having communicated to the insured any information of what had previously occurred at the time of applying for this permission, which was said to be such a fraud in law, as would prevent a recovery of the premium even in case the risk had not been run.

Judge WASHINGTON charged the jury in favour of the plaintiff, and we shall give a summary of his charge, in the same brief and necessarily imperfect manner in which we have stated the arguments of the counsel.

He observed, that he was much mistaken, if it ought not to give pleasure to underwriters for the Court to say that the principles of law on which the defendants' counsel in this instance relied, were unfounded. There are two things necessary to form a contract: the consent of the parties, and a sub-

ject on which the contract is to take effect. If the risk contemplated in a policy, never commence, there is no contract; and the premium which is the price of the risk must be returned. By this policy the adventure was to begin on goods *laden at La Vera Cruz*, whereas no goods were laden at *La Vera Cruz*, but the *Alert* returned with the same cargo which she had carried from *New-York*. It never could have been in the contemplation of these parties, that the risk should attach on this cargo, no more than if they had insured a cargo of rum, and a cargo of cocoa had been laden, the policy could be considered as covering the latter. That as to the memorandum giving permission to touch at the *Havanna*, it was merely additional to the former contract, but not a new insurance, in making which, both parties evidently acted under a mistake in point of law, supposing that the risk had commenced at *La Vera Cruz*, whereas in truth it had not. That without doubt, the parties might have agreed that the risk should be considered as having commenced, and bound themselves by such agreement, as in a case of deviation known to both the parties, the underwriter may waive the effect of the deviation, and bind himself for a subsequent loss; but that to make such an agreement in this case, a full knowledge of all the previous circumstances and their effect on the rights of the parties was necessary. The Judge observed, that it was unnecessary to express an opinion on the point of seaworthiness, the case being with the plaintiff on the other ground, and the jury found a verdict accordingly.

In Chancery.

EASTER TERM, 1770.

William Daw Tothill, Esq. *v.* the Right Honourable William Pitt, Earl of Chatham.

WHERE the words of a will would give an express estate tail in a freehold, the same words applied to personal estate will give the whole interest; and as, by a devise of rents and profits, lands will pass, so a devise of the dividends of bank stock is of equal import with a devise of the stock itself.

The Editor is indebted to the reporter of the case of *Perryn* v. *Blake*, for the following important argument. This report will be found to be much more full than any other. The case is also reported in *Brown's Parliamentary Cases*, and commented upon in *Fearne*. *Daw*, who afterwards assumed the name of *Tothill*, filed his bill in the Court of Chancery, in *Easter term* 1765, by which he prayed that *Pitt* might be decreed to transfer to him, &c. The answer was filed in *June* 1765, in which *Pitt* insisted on his absolute right and title to the property and things claimed in the bill. The case was heard at the Rolls, in *June* 1766, before sir *Thomas Sewell*, the master, who decreed that the bill should be dismissed, without costs. *Daw* acquiesced in this decree, at the time, by letter to *Pitt*; but three years afterwards he prayed an appeal, and the cause was again heard before the Lords Commissioners for the custody of the great seal, in *June* 1770, when it was decreed that the order of dismission of *June* 1766, should be reversed. From this latter decree the Earl appealed. After hearing counsel, viz. *Thurlow* and *Mattocks* for the Earl, and *Wedderburne* and *Dunning* for the respondent, the following question was put to the Judges:

" Whether, in the event which has happened, the devise to the respondent, W. D. T., of the bank stock, &c. specifically bequeathed, is good and effectual or void?" and the Lord Chief Baron of the Court of Exchequer, having delivered the unanimous opi-

nion of the Judges, that the devise was void, it was thereupon ORDERED and ADJUDGED that the decree complained of should be reversed. *MS. Jour. sub anno* 1770—1, *p.* 851. *Vid.* 7 *Bro. Par. Cases*, 460.

THIS cause came before the Court of Chancery, upon an appeal from the decision of the Master of the Rolls in favour of the defendant.

The case was this. One *Tothill* devises to Sir *William Pynsent*, "all the dividends of my bank stock in the three per cent. consols, and the *produce* of my exchequer annuities, for his life;" and after his decease he devises, in the same manner, to Miss *Leonora Ann Pynsent*, for life. After many other particular bequests, he gives all the residue of his estate, both real and personal, to Miss *Pynsent*, and the *heirs male* of *her body*, *lawfully* begotten, forever; and for want of such issue, to *William Daw*. Then the testator directs, that his jewels, plate, &c. should be locked up till it were known who should be his heir.

These two points arise:

1st. Whether the words *heirs male of her body* were words of limitation or purchase?

2d. If they were words of purchase, whether the devise being after a general failure of issue of Miss *Pynsent*, were not too remote to carry the interest to Mr. *Daw?*

The defendant claims under the devise of Sir *William Pynsent*, who derived his title from his sister, Miss *Leonora Ann Pynsent*, who died in his lifetime, without ever having had issue.

Upon the first argument, it was insisted for the plaintiff, that it was the plain intention of the testator to distinguish between the use, and the thing itself; because where he devises the real estate he does it directly; but where he mentions stock, he cautiously confines the devise to the dividends only, which distinction was taken and admitted in the case of *Fonnereau* v. *Fonnereau*, *MS.* [3 *Atk.* 315.] determined by Lord *Hardwicke*, and in *Exhill* v. *Read*, determined in 1751. It was also argued, that the devise to Miss *Pynsent* was in the nature of a

double contingency, to wit: if she "had issue male, such issue was to take, but in the event of her never having issue, then ultimately to the plaintiff, Mr. *Daw*." To support that argument the cases of *Vachel* v. *Vachel*. *Wood* v. *Saunders*, *Pol.* 35. *Eq. Ab.* 245. 2 *Stra.* 1092. 2 *P. Wms.* 618. and *Gower* v. *Grovenor*, [*Barnardist. Rep. in Chan.* 54.] were cited.

Attorney General, for Lord *Chatham*. There is one known and certain rule of law, which is applicable to all kinds of property. It is, that every executory limitation is a gift which is to commence *in futuro*, on some certain event that must happen within the compass of some life in being, or a minority beyond it. It is not sufficient that the event *may* happen, it *must* necessarily happen within the time that I have mentioned. The estate, in the mean time, is so entirely in the disposal of the devisor, that, as to the vesting of the executory devise, it is immaterial what becomes of it, or what is done with it, unless it consist of such a quality, that the person who takes it in the interim, may, by misusage, render the existence precarious, or greatly diminish the *value* of it. In this case, the executory devisee may compel security, by filing his bill in chancery. The effect of this security is, that the legacy shall be secured to the complainant, in the condition in which the devisor meant that it should descend to him on the happening of the contingency. There are two ways of establishing these executory devises.

The first is, by confining the limitation over on the dying, without leaving issue at the death, or to a minority beyond it. This case is not within that rule, for Mr. *Daw* is not to take until a total failure of issue in Miss *Pynsent*.

The second manner of establishing executory limitations is, that of construing the general limitations, to effectuate the plain intention of the testator into contingent limitations, to wit, to the first devisee for life, with the limitation over to the first, second, and so on, to every other child, and if she die without issue, remainder over.

This is the manner in which it is contended by the counsel

for the plaintiff, that the words of this will are to be construed, in order to support the remainder, which is limited to Mr. *Daw.* In *Pollex.* 33. 1 *Mod.* 115. this manner of construing wills was condemned, as tending to establish perpetuities. It was first allowed in 2 *P. Wms.* 626. afterwards in *Forrest.* 55. 245. *Hodsel* v. *Pussey;* and in the case of the Duke of *Newcastle* v. *Pelham*, the Judges went still farther. In the House of Lords it was determined, that the remainder vested in a remote remainder-man, there not being persons *in esse* to take the nearer limitations; yet on the birth of a child afterwards, it should return out of the remote remainder-man, in whom it had vested, and vest in the child who stood in a prior limitation, to effect the intention which was manifestly expressed by the testator. But a general limitation, without very particular circumstances, shall not be construed to mean a limitation to the first taker for life, with a contingent remainder to the children. This clearly appears by the determinations in 3 *P. Wms.* 31. 2 *Vern.* 362. 368. 1 *P. Wms.* 132. 1 *Ro. Ab.* 611. *Mo.* 810. 1 *Sid.* 37. 2 *Ch. Ca.* 326. and in the cases of *Butterfield* v. *Butterfield*, [1 *Vez.* 133. 154.] *Barret* v. *Beckford*, and *Bodens* v. Lord *Galway*. In the cases of *Papillon* v. *Voice*, [2 *P. Wms.* 471.] *Perrin* v. *Blake*, [*Am. Law Journal*, No. 2. Vol. 1. p. .] and *Peacock* v. *Spooner*, [2 *Vern.* 43. 195. 2 *Freem.* 114.] there were collateral and very peculiar circumstances; and in *Hodgson* v. *Bussy*, 2 *Atk.* 89. the reason of Lord *Hardwicke's* opinion was because there were words superadded to the word *heirs.*

But in no case whatever, shall words, that directly give an estate tail in the case of real estate, admit a limitation over *in* the case of personal. But if the words be indirect, ambiguous, or words of implication only, the intention will operate with the Court, so as to construe the words in such manner as to make the limitation over of personal property good; and on that distinction are the cases in 1 *P. Wms.* 633. 432. 1 *Ch. Ca.* 266. 2 *Ch. Ca.* 209. 1 *Mod.* 50. 1 *Vern.* 478. *Fitz.* 68. *Forrest.* 56. *Atkinson* v. *Hutchinson*, [3 *P. Wms.* 258.] *Keily* v. *Fowler*, [*House of Lords, Jan.* 1768.] *Saltern* v. *Saltern*, [2 *Atk.* 308.] and *Lawer* v. *Davies*, [2 *Ld. Raym.* 1561.]

In the present case the general description or limitation to the heirs is such, that in the case of real estate the heirs would take by descent; and the limitation over cannot be good as an executory devise, for the intention was clear and so it is expressed, that Mr. *Daw* should never take if Miss *Pynsent* had issue, which is so remote a possibility that the law will not admit it. The intention is a direction to know how the law shall be applied, but it cannot control the law. The distinction taken by the counsel for the plaintiff, that as the produce or profits of the stock were only limited to Miss *Pynsent*, it plainly indicated an intention that she should not have the principal, is of little avail; for the rule which applies to real estates is equally applicable to personal property. There is no difference between giving the use and the thing itself; and all the cases which support the executory limitation of personal estate are cases in which the use is given. As 8 *Co. Manning's* case, 2 *Ch. Ca.* 129. 2 *Vern.* 53. 245. 1 *P. Wms.* 1. *Butterfield* v. *Butterfield*, [1 *Vez.* 133. 154.] *Garth* v. *Baldwin*, [2 *Vez.* 646.] and in *Moor*, 635. 758. 753. and *Cart.* 27. it is held that the devise of the profits of a term is a devise of the term itself. Upon the whole, as there is no expression applying to the *person* of Miss *Pynsent*, but a general limitation over on her dying without issue, I hope the Court will think the contingency too remote, and the plaintiff not intitled to recover.

Wedderburne, in reply. The *first* consideration in this case is, what was the intention of the testator?

The *second*, whether his intention be such, as may, consistently with the rules of law, be carried into execution. It has not been strenuously contended, that the intention of the testator was that Miss *Pynsent* should take for her life; that if she left issue, that such issue should take, but that if she left no issue, Mr. *Daw*, the appellant, should take. The clause in the will, wherein it is directed that the diamond ring, plate, &c. shall be locked up, until it should be known who should be his heir, shows beyond a doubt that in the event of Miss *Pynsent* leaving issue, he intended the ultimate property in the bank

stock, &c. for that heir; and in the event of her leaving no issue, for Mr. *Daw*. It was impossible for him to know whether Miss *Pynsent* would die without issue, and consequently impossible that he should know who would be, what he calls, his heir; that is, the person to whom he intended ultimately to give the property. And therefore he directed that the things should be locked up, until the death of Miss *Pynsent* should determine the matter. It is not to be conceived that he intended, as has been hinted on the other side, to dispose of his estate in such a manner that the persons, who thought themselves the objects of his bounty, should be under the necessity of applying to the Chancellor to determine, who should take the estate. This is a singularity that was never known in any man but Serjeant *Maynard*, who devised a small part of his estate in a particular manner, and in a marginal note mentioned his having done it with a view of having a doubtful point of law settled, which he knew would arise upon this devise. Moreover, what strongly evinces the intention of the testator is, his making use of different words in the different dispositions which he makes of the bank stock, &c. He gives to Miss *Pynsent* the *dividends* only of the stock for her life. In his idea it was one thing to give the dividends, and another the stock itself. And although perhaps, in construction of law, a gift of the dividends may amount to a gift of the stock itself, yet the testator thought it was not so: and, however he might have been mistaken as to the operation of law, it most clearly appears, from the distinction which he took, that he meant to give Miss *Pynsent* but a partial interest.

Having shown the intention, I come now, in the second place, to prove that the disposition, which he intended to make, is such as may be made without affecting any rule of property.

It is admitted that this is an intention which might have been carried into effect, if the word *sons* or *children* had been inserted instead of *issue*. I know of no rule of law that will prevent the will from being construed in the same manner as it would have been, if either of those words had been used. To carry into effect the intention of the testator, words that have

as immutable, legal significations, have been changed. A devise of a freehold estate to a man and his executors has been determined to be a devise in fee simple; and a devise of an estate not of freehold to a man and his heirs has been held to pass the ultimate property of the thing devised. When the intention is once discovered, words not technical or not grammatical, nor even a deficiency of words prevent it from the operation that was contemplated. In the case of *Spalding* v. *Spalding*, *Cro. Car.* 185. the words *without issue* were inserted, because without them the testator's intention would have been defeated. Sir *Joseph Jekyl's* words, that he would always contend for intentions when they were clear, should always be regarded in the construction of wills. If the intention of the testator, so far as it is lawful, when clearly expressed, is not to be carried into effect, without regard to the form of his expressions, it will, in effect, be determined that no man shall draw his own will. A testator cannot create a perpetuity nor control the operation of the law; and therefore if a chattel interest once vest in any person to whom an unconditional limitation in tail is made, that person takes the absolute property and all further limitations are defeated. In this case if Miss *Pynsent* had had a son, and the bank stock &c. had once vested in him, the limitation to the appellant would have been annihilated; because if it had still existed, the estate vested in the son of Miss *Pynsent* would have been a perpetuity. But it is objected that the legal effect of the words *heirs male of the body*, after a limitation for life, when applied to chattels, is such, that the ultimate property passes by them, and, of course, that all subsequent limitations are void. This is a doctrine that must be founded on the strongest authorities, or it can never be supported.

I hope the Court will indulge me, while I endeavour to state by what degrees the law, through the liberality of Judges, has disentangled itself from the subtilities with which it has been perplexed. The statute *de donis*, by preventing the alienation of the donee in tail, created absolute perpetuities, and enabled men to make firm indefeazible settlements of their lands.

Things remained in this situation until the time of *Taltarum's* case, and the statute of *fines;* after which there could be no doubt but that a donee in tail by suffering a common recovery or by levying a fine, might have defeated any instrument. The effect of the statute *de donis* being thus, in a great measure, destroyed, and the powers of men to make firm settlements defeated, the ingenuity of the lawyers of those days was employed in attempts to create perpetuities to a certain effect. To obtain this end two methods were devised. The first was the introduction of remote contingencies; the second was the giving the first taker an estate for life only; but both of these were soon defeated. The first in *Chudleigh's*, [1 *Rep.* 137. *Fearne*, 158.], the second in *Skelley's* case, [1 *Rep.* 93. *Fearne*, 141.] The first taker, to whom an estate for life was given, was held to take the inheritance for the benefit of the lord, who would have lost the fruits of the feudal tenures, if the heirs of the first taker had taken by purchase. But as this reason depended entirely upon feudal notions, it cannot be applied to limitations of bank stock, nor to any other thing which cannot be the subject of feudal tenures. Afterwards an attempt was made to establish limitations of long terms of years. There is no case from which it appears exactly at what time this attempt was made, but Lord *Nottingham* supposes it to have been about the 38th of Queen *Elizabeth*. These limitations were defeated by the determination in the case of *Childs* v. *Bayley*. *Cro. Jac.* 460. [*et* 1 *Roll. Abr.* 611. *p.* 5. *Palm.* 48. 333.] After this case, came that of the Duke of *Norfolk*, [3 *Chan. Ca.* 1. *Pollex.* 223.] which is in contradiction to *Childs* v. *Bayley*, [*Cro. Jac.* 459. 1 *Roll. Abr.* 611. *p.* 5. *Palm.* 48. 333.] Before the Duke of *Norfolk's* case, it seems not to have been a settled and incontrovertible principle that there could be a further limitation of a term of years after an estate for life. It was established by by the decree of Lord *Nottingham* in that case. Attempts were likewise made to limit personal chattels after a gift of them for life, &c. and a distinction taken between the gift of a thing and the temporary use it, contrary to the idea of Lord *Coke*, that the gift of a personal thing passes it forever.

For the sake of family settlements the court strongly contended with technical rules in order to establish perpetuities to a certain degree. In the cases of personal estate they permitted a new species of technical reasoning to prevail, by allowing the reasoning relating to freeholds to be applied in some measure to chattels; and it became a rule that whenever a chattel interest *vested* in a person, in consequence of a limitation, the words of which would have given him an estate-tail, if applied to an estate of freehold, that person should take the ultimate property of the chattel.

Lord *Macclesfield*, in the determination of the cases that came before him, adopted a sensible and manly kind of reasoning. He did not hesitate to establish limitations of terms for years, that did not import a perpetuity, and established it as a rule, that where the words of a devise, if applied to a freehold, would create an estate-tail *by implication only*, they should not operate so as to pass the ultimate property of a chattel interest, and make all limitations over, void. He took a distinction in the case of *Target* v. *Gaunt*, 1 *P. Wms.* 366. between the words of a devise when they are applied to a freehold, and when to chattels; and, that being the case of a leasehold, he construed the words *dying without issue* to mean, according to the vulgar acceptation of them, dying without issue at his death, and not, dying without issue indefinitely. The same distinction was taken in the cases of *Nichols* v. *Hooper*, 2 *Vern.* 686. *Forth* v. *Chapman*, 1. *P. Wms.* 663. In the case of *Atkinson* v. *Hutchinson*, 3 *P. Wms.* 258. Lord *Talbot* took the distinction and established the opinion of Lord *Macclesfield.* In *Forth* v. *Chapman*, the words were *if he die without leaving issue;* which gave rise to a notion that unless the words, *without leaving issue*, or, *without issue then living*, occurred, all limitations over should be void. This notion does seem to have been adopted in the determination of the case of *Green* v. *Rod*, *Fitzg.* 68. and it has been said that it was adopted in *Beauclerk* v. *Dormer*, 2 *Atk.* 308. likewise. But this

last was a very partial case, and Lord *Hardwicke's* decree seems to have been founded upon the singular circumstances attending it; for it is observable that there was a general, absolute, unqualified interest given to Miss *Dormer*, and after that, a limitation to Lord *George Beauclerk*, but such a limitation would not have been suffered even in the case of a freehold. In the case of *Keily* v. *Fowler*, [House of Lords, *January*, 1768] it appears that the rule of law, which creates an estate tail in the first taker, was improperly transferred from real to personal estates, and that, in the cases of chattels, limitations over after dying without issue, without leaving issue, or for want of issue, may be good. In that case the doctrine, that I have been awkwardly endeavouring to explain, is fully and clearly laid down and adopted. The words of the devise in the case before the court are *to Leonora Ann Pynsent during her life and after her decease to the heirs male of her body lawfully begotten forever, and for want of such issue to Mr. Daw.* That the words, *heirs of the body* or *right heirs*, may be words of purchase appears from *Lisle* v. *Gray*, Sir *Th. Jo.* [2 *Lev.* 223. 1 *Raym.* 278. *Fearne* 104.] *Long* v. *Laming*, and *Perryn* v. *Blake*, which were cases of freeholds and at law; and from *Wood v. Saunders*, *Pollex.* 35. and many other cases. And I hope from what has been said, it is clear, that in the cases of chattels there is no rule of law that will prevent their being words of purchase, in every instance where a testator intends them as such. This is the case of a chattel. The testator's intention to make *heirs male of the body*, words of purchase is manifest, and therefore, I trust they will be construed to be words of purchase.

The issue then of Miss *Pynsent* being to take by purchase, there can be no doubt but the executory devise to the appellant upon the contingency of Miss *Pynsent* leaving no issue, (which contingency has happened) is good: for though the case of *Burgis* v. *Burgis*, [1 *Mod.* 115.] and Sir *William Backhurst's* case in *Pollexfen's Reports* are authorities against it, they do not at this time affect the case. When those causes were

determined, the law relating to limitations of terms for years was not settled. Lord *Nottingham*, in the Duke of *Norfolk's* case, [3 *Cas. in Chanc.* 30.] went a great way towards settling it. From his time it grew more and more certain, till the time of Sir *Joseph Jekyl*, who, in the case of *Standley* v. *Leigh*, 2 *P. Wms.* 686. has fixed it beyond a doubt, that executory limitations of this nature are good.

Upon the whole I contend that the intention of the testator most clearly was, to give Miss *Pynsent* the bank stock, &c. for her life, in the event of having issue to give them ultimately to the issue; but in the event of her having no issue, to give them ultimately to the appellant: that, this is an intention that might well have been executed: that, as this is the case of a chattel, in which there is no rule of law to contradict it, the most sacred regard is to be paid to it: that even in the case of freeholds, as in *Robinson* v. *Robinson* and *Perryn* v. *Blake* the strongest legal operation of words has been overruled to make way for the intention of a testator; and that, *à fortiori*, in the present case the intention of the testator shall prevail, without regard to the terms in which he has expressed himself, however fatal they might have been in the case of a devise of a freehold.

N. B. Lord *Hardwicke*, in the case of *Villers* v. *Villers*, said that the different circumstances in *Peacock* v. *Spooner*, 2 *Vez.* 660. and *Webb* v. *Webb*, 1. *P. Wms.* 132. were the occasion of the different determinations in those two cases; that in both of them the estate moved originally from the husband, and that, if in the first case, the wife had been held to take the whole of the chattel, she would have had it in her power to have deprived the children of him from whom it moved of it; that, in fact, an attempt was made to do it, and that the Chancellor determined the matter as he did to prevent such a piece of injustice; but that no such ill consequences could flow from a determination in *Webb* v. *Webb*, that the husband should take the ultimate property, because the interest having moved from him, there could be no impropriety in leaving it in his power

to dispose of it *ad arbitrium*, and therefore it was determined that the whole interest vested in him.

The Court, after taking time to consider, delivered their opinions, in which they adopted the principles laid down by *Wedderburne* in every part of his argument, and accordingly gave

JUDGMENT for the APPELLANT.

Upon an appeal to the House of Lords, this judgment was reversed without a division on the question. 7 *Bro. Par. Ca.* 453.

At the time this case was argued in Chancery the judgment of the *K. B.* in *Perryn* v. *Blake* was not reversed. But that reversal has made the case of *Perryn* v. *Blake* an authority against *Wedderburne's* argument, which was then a strong one in his favour.

[The case of *Perryn* v. *Blake*, to which allusion is made in the above report, should have preceded it; but owing to an accident it is delayed until the ensuing number. For these cases the Editor is indebted to the kindness of WILLIAM COOKE, Esq. of this city, who, at his request, permitted copies to be taken from a note book, kept by him while a student in *London*.]

Court of Vice Admiralty.

NASSAU, N. P. NOVEMBER 12, 1805.

Before his Honour Henry Moreton Dyer, Esq. sole Judge and Commissary.

SAMPSON, PHIPPEN, Master.

DECREE, ON PRETENDED NEUTRAL PROPERTY.

JUDGMENT. This is the case of a ship, captured under *American* colours, on a voyage from *Philadelphia* to *Havanna*, and in respect of which the captors contend for condemnation, on the ground that the same ship and cargo originally came from *Marseilles* to *Philadelphia*, with an intention to proceed on her present destination.

In the course of the opinion which I am now called upon to give, it appears to be the most convenient arrangement, that I should first state what is the law upon cases of this description; and then proceed to consider how far the facts of the present case warrant the application of the law.

I shall begin by merely adverting, as a preliminary proposition, to the rule, that the trade of neutrals, between the mother country and the colony of the enemy is illegal; a principle too plain, I apprehend, to be dissented from, and which it would be needless to enforce by authority or argument.

I conceive it to be a rule equally plain, that a fraudulent stoppage in an intermediate neutral port to break the continuity of a voyage, which, if continuous, would be illegal, must be subject to the same penalties as the continuous voyage itself. Whatever some interested defenders of neutral rights may advance, I apprehend the latter principle to be perfectly as clear as the former; and at least I have not heard it controverted by the argument in this case.

Taking the principle then to be clear, the important question in every case of that sort must be, whether the arrival in the neutral port were merely a stoppage *in transitu*, made with the fraudulent intent of breaking the continuity of the voyage; or whether it effected a complete and *bona fide* importation into the neutral country; it being clearly admitted, that after such a *bona fide* importation, and an admixture of the articles with the common stock of the country, it is competent to the neutral merchant to transport them forwards, wherever he pleases.

Several cases have occurred before our superior courts of prize, in which these principles have been discussed.

In the *Polly*, *Lasky*, 2 *Rob. Ad. Rep.* 80. which was the case of an *American* ship taken on a voyage from *Marblehead* to *Bilboa*, with a cargo of colonial produce, which had been brought from *Havanna* to *Marblehead*, it appeared that the goods had been legally imported into *America*, and that the duties had been paid; and under these circumstances, the High Court of Admiralty decreed for restitution.

In the *Penelope*, *Flagg*, (Court of Appeals, 10th *June*, 80) the vessel was taken on a voyage from *Charleston* to *Malaga*, with a cargo of sugar and tobacco, which had been brought from *Havanna* to *Charleston*, in another vessel belonging to the same *American* owners. But that cargo appearing by this evidence to have been lawfully imported into *America*, the Lords restored it.

In the *Mercury*, *Roberts*, (Court of Appeals, 28th *July*, 1800 and 18th *January*, 1804) the voyage was from *Charleston* to *Hamburgh*. The cargo, sugar, which had been brought in the same vessel from *Havanna*. The manifest described the cargo to be laden at the port of *Charleston*, and there was an attestation of the master, annexed to the same instrument, that the goods had been legally imported into *America*, and the duties thereon paid or secured. But it appeared by other and indisputable evidence that not one article of the cargo had been landed since the ship left *Havanna;* and that the sole purpose of touching at *Charleston* had been to obtain a new set of

papers for the voyage to *Europe*. Under these circumstances, the property was condemned.

In the *Eagle*, *Weeks*, (Court of Appeals, 15th *May*, 1802) there was a voyage from *Philadelphia* to the *Havanna*, with a cargo of bar-iron and nails, which had been brought from *Bilboa* to *Philadelphia*. Further proof was ordered to show the nature of the importation of those articles into *America*, and to ascertain the fact whether the duties had been paid. Very full further proof was subsequently exhibited, by which it appeared, that the duties on importation had been actually paid; and that the two voyages were perfectly distinct transactions. And upon this proof the Lords pronounced for restitution.

The *Essex*, *Orne*, (Court of Appeals, *June*, 1805) was the case of an *American* vessel captured on a voyage from *Salem* to *Havanna*, with a cargo which had been in the first instance brought from *Barcelona* to *Salem*, and there landed and warehoused; and within about three weeks afterwards, reshipped and sent forward in the same bottom. The usual bond had been given for the duties in *America*, and there was some appearance that they had been actually paid after the cargo was landed and surveyed; but they had (a very small part excepted) been drawn back on the re-exportation. In that case it would seem, (for no reasons were given) that the Lords considered the original intention of the parties to have been, not to dispose of the cargo in the neutral country, but, to send it on to the colonial port of the enemy; and therefore the property was condemned.

The last cases, which have occurred on this subject, are those of the *Enoch* and the *Rowena*, before the High Court of Admiralty, 23d *June*, 1805. They were two *American* ships, laden with *French* colonial produce, bound from *Boston* to *Antwerp*. The cargoes had been landed in *America* in the same manner as in the *Essex;* but the vessels had come originally from *Martinique* to *America* with the same cargoes, on account of the same neutral owners. Sir *William Scott* inferred, from all the circumstances of these cases, that the original

design was a voyage to *Europe*, and on that ground, referring to the *Essex* as an authority, he pronounced both ships and their cargoes to be subject to condemnation.

The rule laid down by the late decisions (and which it is my duty to observe in cases where it applies) I conceive to be this: That it is incumbent on the claimant to show that the original intention on his part was, that the arrival in the neutral port should completely end the one voyage; and that the subsequent voyage in which he was interrupted was a new, original and distinct speculation; in short to negative any presumption of a colourable attempt to evade the penalties of a direct trade.

It is no secret that much clamour has been raised against the exalted Court whose recent decisions I have just adverted to; and that these decisions have been arraigned, as being inconsistent with the principles laid down in the former case of the *Polly*, *Lasky*. For my own part, I cannot see any just reason for that assertion.

The language which, as a belligerent nation, we have been uniformly authorized by every principle of common sense and every doctrine of the law of nations, to hold on this subject, may be couched in the following terms:

" You, the neutral, while you shall be protected in all your former rights and privileges, shall not interfere in any new trade; which by benefiting our enemy, shall arrest the influxion of our force, and disconcert the operations which the law of arms authorizes us to direct against him; in peace, you were not allowed to trade between the parent state and the colony of our enemy, therefore you must not do so in war; neither shall you be at liberty to carry on covertly and indirectly, that trade which is thus interdicted in its open and direct shape. Carry on that commerce, which you were always permitted, between the parent state and your own country: pursue the same intercourse between your own country and the colony, which was formerly indulged to you. But when we find your vessels carrying to the hostile colony the produce of the mother country, or to the mother country the productions of its colo-

nies, satisfy us plainly, honestly and substantially, that the articles carried in either case were drawn from your common mercantile stock (into which they had been formerly incorporated by a *bona fide* importation) and that they were not originally brought to the neutral port with an intention of transmission to the ultimate point of hostile destination."

In conformity with this doctrine, our courts of prize did certainly at one time consent to admit, as the test of a *bona fide* importation, that the goods should be landed and the duties upon importation paid in the neutral state. But when in a longer course of experience, cases should arise, in which we find that articles are landed but to be reshipped, and that duties are paid, which are presently afterwards drawn back upon re-exportation; or rather that a mere security for the payment is taken, which is only to be enforced in the event of the articles remaining in the neutral state; have we not a just right to say, that we will *no longer* consider those two acts as *exclusive* tests of honest importation; and that we expect the fact of such an importation to be established by other and more convincing evidence? And I should be glad to know on what just grounds of argument we can be said in making this demand to recede from our original principle. But I forbear to attempt a defence of that most upright and eminent Judge, whose talents and whose virtues far transcend my feeble praise, and are best rewarded by the united testimony of an applauding nation.

The principle then, I must assume, remains entire, that in cases of this sort, it is necessary to show that the voyage did end, or was intended to end, in the neutral country, to which the vessel belongs, and that there was no projected communication between the hostile ports.

A distinction, however, is attempted as to this particular case; and it is contended by the claimant's counsel, that, with whatever justice these doctrines may apply to an indirect trade between the mother country and the colony of *the same enemy*, yet that the case of a circuitous trade from the parent state of *one enemy* to the colony of *another* is different; that all the *cases*,

which have been decided, are cases of the former description, and that there is no case of the latter kind.

I am ready to admit that the assertion is right as to those cases which have been cited at the bar, or which the research of the court has discovered. Though I think that cases of the other kind must have arisen, I confess that they have not occurred to my observation. But supposing the fact to be, that no such case has ever been decided, and that it is now presented, for the first time, to the view of this or any other court, little anxious as I ever am to establish new doctrines upon my single judgment, I should not hesitate to say, if it were necessary, for the first time, that a colourable stoppage in a neutral port, in the course of a meditated voyage from the mother country of one enemy to the colony of another enemy, allied in war, is illegal. A direct trade between two such ports of confederate powers was determined in the *Rose, Young*, 2 *Rob. Rep.* 206. and in many other instances, to be equally penal with the direct trade between the parent and colonial ports of the same enemy. Trade between ports of the same enemy, when attempted to be circuitously managed, has been held equally penal with the direct intercourse itself; and I cannot discover that a shade of difference exists, so as to screen the like evasion in the course of a trade between the parent state and the colony of two different nations, who are our common adversaries.

Having thus stated what I conceive to be the law upon questions of this kind, I proceed to consider whether the facts of this case be such as to bring it within the rule.

I will begin with the oral testimony, which has been derived from the examination on the standing interrogatories of five persons, a larger number than is usually required by the Court; but an excess, which, under all the circumstances of the particular case, and among them the great value of the property, the Court very readily approves.

The evidence of the Spanish passenger, who was bound from *Philadelphia* to *Havanna*, I may at once lay out of the case, as he was wholly unacquainted with the transaction or any of the parties to it.

Nor does the master himself furnish much more information. It appears by his own declaration, that he was newly appointed, and but little trusted. His first acquaintance with the vessel was but a few days before her departure from *Philadelphia*. He knows as little as to the cargo, nor says any thing material in respect of that, except that he believes it was for the most part of *foreign produce*.

The two next witnesses, whose evidence I shall consider, are the cook and the mariner. Upon these persons something of stigma and discredit was attempted to be thrown, but I must say, the attempt was quite unfounded. Nothing has been advanced either against their competency, or their credibility; they appear, throughout their depositions, to speak without prejudice or affection; their evidence will be found to be very substantially fortified by many facts of the case; and I can see no good reason why they are not to be believed.

By the cook we are told, that the name of the master is *Thomas Phippen;* that he has only known him from the beginning of the present voyage; that he was appointed to the command by Captain *Mann;* he knows not the precise time, but it was at the commencement of the present voyage; that he himself served on board of the said ship in the capacity of cook; that he has known the ship from the 2d of *April* last, when he was first shipped in her; that he saw her first on that day at *Marseilles* in *France;* that the ship was then called the *Two Friends*, but since her return from *Marseilles* to *Philadelphia*, she has been called the *Sampson;* that she carried from *Marseilles* a cargo consisting chiefly of wine, with some oil, he believes, brandy, fruits preserved in brandy and other articles; that the cargo was landed at Mr. *Foussatt's* wharf at *Philadelphia*, *and all put on board again* from the same wharf; that he was informed by Mr. *Delaunay*, that Captain *Mann* had purchased the ship after her arrival at *Philadelphia;* that he and Mr. *Delaunay* were the only persons now on board the ship who came in her from *Marseilles*.

From the mariner we learn, that he came on board for the first time at *Philadelphia*, and knew nothing of the former

transactions of the voyage, excepting that he assisted to unload the ship on her arrival at *Philadelphia* from *Marseilles;* that her cargo then consisted chiefly of wine, and from the marks on the casks he *believes the same cargo* (with perhaps some additions) *is now on board*, having been reshipped in her, and is of the growth and produce either of *France* or *Spain;* that the cargo was put on board at *Philadelphia*, before any of the crew, except the mate, were hired.

The united testimony of these two persons tends to establish the following history of her present transactions: That this ship, then named the *Two Friends*, commanded by another captain, and with another crew, sailed originally from *Marseilles* to *Philadelphia*, with a cargo of wine and other articles, under the charge of the same supercargo who appears here: that arrived at *Philadelphia*, the cargo was landed at the wharf of the principal owner, Mr. *Foussatt:* that the former captain and crew were then discharged, new ones appointed, a transfer of the vessel affected to a new set of owners, the same cargo again put on board from the same wharf, (whether after the payment of duties or not, does not appear) and a new voyage to *Havanna* commenced under the direction of the same supercargo, and with only one man besides, accidentally on board, of the former crew.

To speak of the case thus made out, in the mildest and most favourable terms, it must be admitted to be a case of considerable suspicion. Let us then see how those suspicions are cleared up by the deposition of that person who is most intimately acquainted with the whole transaction. From Mr. *Delaunay*, the supercargo, who has the best means of knowing, we may expect to receive the fullest information.

The sum of Mr. *Delaunay's* deposition is this: That he has known the captain only from the beginning of *September*, (that is the commencement of the present voyage): that he took possession about that time at *Philadelphia;* that he himself served on board in the capacity of supercargo; that he does not recollect how long he has known the said ship, he first saw her at *Philadelphia* (from whence of course he would have it

understood that he knew nothing of the vessel before her sailing lately from that port): that the ship has been called the *Sampson* since *September*, but he cannot recollect her former name; that her last voyage began at *Philadelphia*, and was to have ended there; that he knows not the quality of any cargo the said ship has carried previous to the time of her capture; (that is to say, that he knows nothing of the cargo brought from *Marseilles*): that the ship sailed from *Philadelphia* as her last clearing port, about the 13th *September;* that for the present voyage she has been under the direction of the owners, Messrs. *Foussatt* and *Mann*, with whom he corresponds; but to the question "under whose care and direction the said ship has been during the preceding voyage," he refused to depose, notwithstanding that he was reminded by the examiner of his having sworn to depose the whole truth. That the cargo was all put on board at *Philadelphia* in *August* and *September* last, (meaning I presume, to infer, that the cargo was put on board there for the first time); that the ship was sold at *Philadelphia* to her present owners *Foussatt* and *Mann*, but he refuses to answer by whom; that the sale took place in *September;* he presumes there was a bill of sale, but knows nothing about it, or whether any agreement were entered into concerning the purchase further than what appears upon it; that there were on board, as passengers, the *Spaniard*, whom I first mentioned, as having been examined, and three boys who were going to their father at *Havanna;* that they all came on board at *Philadelphia*, here again intending to infer, it must be presumed, that they came on board there for the *first time*. Such indeed, was the fact as to the *Spanish* gentleman; but as to the three boys there is distinct evidence by the consular passports, that they had come originally from *Marseilles*, a fact which it is too evident this gentleman wishes to suppress, and has in so doing completely falsified himself. He goes on to say, that he is confident that the sale to the present owners was truly made, and not for the purpose of covering the real property; rather an inconsistent declaration this from a person who before knew nothing about a bill of sale: and finally he avows that he has given every information in his

power relative to the present cargo; but he refuses to depose any thing as to preceding ones.

Of this most extraordinary deposition, the decorum of justice restrains me from speaking in the terms which it might deserve; but the energy of justice does not the less require that penal consequences should be fixed to such improper conduct.

The Court is not insensible to the petition which was presented from Mr. *Delaunay*, to be permitted to be re-examined upon those interrogatories which he before refused to answer; a petition which was instantly rejected, on a reference to the rule of Court, which directs, that where once refusal should take place, the examiner should admonish the witness of the oath taken to speak the whole truth, and notice such refusal upon the examination; and also after previous information of the facts from the examiner, and a sub-assurance from him that the rule had been observed.

This petition and its rejection have been much commented upon, and it has been intimated that the correctness of that refusal may be questioned, together with the whole case, before a higher tribunal. The document itself and the proceeding upon it, being entered on the minutes of the Court, the wish of the claimants will for that purpose, be fully attained. What opinion may be formed upon it in that more enlightened Court, it would be presumptuous in me to conjecture. I will only say for the party himself, *valet quantum valere potest.* As to the court, whose duty it is to apply its decisions in the first instance, I trust it will at least have the effect of showing that the humble individual who presides here, does not sleep upon his post, and would not hastily permit so fatal a departure from the regular forms of proceeding.

Mr. *Delaunay's* deposition has been justified by the argument of his counsel, on the ground that he answered to what he himself thought was necessary, and that he was not bound to reply to every question which he did not deem material. But it is the law, I conceive, and not the individual, which is to prescribe what information is or is not necessary. He who under-

takes to satisfy the inquiries of justice, must do so entirely and unfeignedly, if he would avoid the palpable suspicion of interested suppression; still less can I comprehend how he, who has sworn to depose all that he knows, can feel himself justified in withholding a part. Any further observation, however, must be unnecessary upon an argument which is so wholly rebutted by every rational and received rule of evidence.

Again, it has been urged that Mr. *Delaunay* is a man unacquainted with judicial proceedings, and that some irregularities on his part in matters of this sort may be overlooked. Setting aside all that his oath required, passing over the solemn warning of the officer who administered that oath, and supposing that a defect of form is the utmost fault which can be imputed to him, I must at least observe that he is a man of the most *methodical irregularity* I ever knew; because it so happens, that he withholds his information precisely upon those points which are most material. He is ready enough to speak of the voyage from *Philadelphia* to *Havanna;* but as to any thing which happened prior to the last departure from *Philadelphia*, which was the important point to be ascertained, he refused to depose. Where a conscientious witness has erred upon matter of form, the court would never be disposed to press a mere omission or irregularity against him; but it must be perfectly obvious how little this gentleman has intitled himself to such excuse.

What then, upon the whole, is the effect of Mr. *Delaunay's* testimony? I have no hesitation in pronouncing, that it is completely confirmatory of the history made out by the testimony of the two preceding witnesses, and *with this serious addition*, that the penalties of the transaction were well known to the parties concerned in it, and that this gentleman was from beginning to end employed by them to avoid those penalties, by means of fraud and concealment, to his own as well as their advantage.

It has been argued for Mr. *Delaunay*, that if he had answered those interrogatories fully, he could not have stated any thing to the prejudice of the claims. When we reflect upon

what we have heard from the other witnesses, and upon what even Mr. *Delaunay* himself has admitted upon those interrogatories which he did please to answer, I should not claim much credit for penetration, if I were to form a conjecture as to what his answers would have amounted to, if they had been explicit; but I forbear to enter upon an inquiry which is, in no degree, imposed upon the Court. This gentleman, by his improper conduct, compels me to presume every thing against him, and has deprived himself of the benefit of those lenient constructions (even if any lenity of construction could be strained to serve him) which it is the practice and the pleasure of the Court to apply to persons of ingenuous conduct. I must rather observe as to him, what was eloquently said upon another occasion, " a pertinacious refusal to submit to fair inquiry must incur all the penalties of convicted guilt."

Having drawn this result from the examinations, the documentary evidence becomes of less moment. In a case of this nature, it could scarcely be expected but that some colour of fairness should be given to the formal documents. And yet even among those there is nothing contradictory to the oral testimony.

As to the ship, there are the formal papers in proof of the property of Mr. *Mann;* but they are of a most recent date, being in fact no older than the present voyage from *Philadelphia.* This circumstance combined with the testimony, as to the commencement of the transaction, the change of name, and of captain and crew, the landing and reshipment, leads to no other conclusion than that this change of property was effected for some colourable purpose; and it is equally evident that this purpose was to suppress the former history of the vessel, and to stamp her with new credentials for the present occasion.

As to the cargo, there are bills of lading and invoices in proof of the property of Messrs. *Foussatt* and *Mann* and Mr. *Delaunay*, but the articles themselves which they enumerate, bespeak *French* produce or manufacture, as we have before learned was the fact from some of the witnesses. That the

articles in Mr. *Delaunay's* invoice came from *France*, is further evident from the calculation of prices in francs, which is an ideal denomination of money familiar in *French* mercantile computation. This is not indeed the case with Mr. *Foussatt's* invoice, but in that many articles are of a similar nature, and the marks almost indiscriminately the same with Mr. *Delaunay's*. The articles too, of both invoices are wholly included in the certificate for obtaining the drawback, a paper which, it was justly observed, bespoke a mere entry at *Philadelphia* for exportation. I cannot but conclude from all these circumstances, that the whole of these articles came from *France*, and in this vessel.

A question has been made, how far the misconduct of Mr. *Delaunay*, even if penal as to himself, could affect the property of other persons committed to his charge. I cannot but agree with the captor's advocate in holding this gentleman to be no ordinary supercargo, but one in whom the most unbounded confidence and power have been placed. His employers must therefore be bound by that very general rule of admiralty law, which holds the principal to be affected by the acts of his agents. There are cases, indeed, of wilful and unauthorized conduct in the agent, where that rule may seem to be harsh; but no such argument arises in the present case, where the whole plot appears to have been projected by and known to the employers themselves, as well as their deputed agents.

I beg to be understood as applying these observations, more especially to Messrs. *Foussatt* and *Mann*, who are the owners of the ship, and the former, together with Mr. *Delaunay*, the principal proprietor of the cargo.

There are, however, three smaller shipments claimed on behalf of Mr. *Dabadie*, Mr. *Duval* and Messrs. *Warder* and *Sons*, as to which considerations of a different nature may be applied.

The chief article, in the shipments of both *Dabadie* and *Duval*, are *ribbons* and *satins*, articles which are most probably of *French* produce and manufacture; but that circumstance alone is not enough to affect them. It is not improbable but that

they had been previously imported, *bona fide*, into *America*. Certain it is that they were not included in the certificate of drawback; so that there is no evidence, *prima facie*, of their having been entered for exportation. There is no evidence that they were brought from *France* in this ship; and it appears by the depositions that articles were on board, besides those which were brought from *Marseilles*.

If these articles were of that description, and these persons had no connexion with Mr. *Delaunay* previous to the voyage from *Philadelphia*, I should hold it rather too severe an application of the rule of responsibility by a principal for the acts of his agent to call them *participes criminis* with Mr. *Delaunay*, in respect of his concerns throughout the whole of this transaction. On the other hand, considering the general conduct of Mr. *Delaunay*, I think it would be too much to decree immediate restitution of the property committed to his charge, as to which any possibility of doubt can exist. But I shall allow these gentlemen an opportunity of showing, if they can, by further proof, that they have not been implicated in any of the improper and illegal conduct which I have found it necessary to animadvert upon, in respect to the ship and general cargo.

The only remaining shipment is that of Messrs. *John Warder* and *Sons*, which stands entirely free of all objection. The sole article in their invoice is lard, amounting in value to about 3000 dollars. This is an article which bespeaks itself to be of *American* origin. It is consigned to a merchant at *Havanna*, having nothing to do with the other parties to this transaction; and the shipper himself is equally free from any such connexion.

This shipment, therefore, becomes a very fit subject for immediate restitution; but the ship, together with the property of Mr. *Delaunay* and his employers, I feel that it is my duty at once to condemn.

CHARGE DELIVERED

BY THE HONOURABLE

Judge Wilds of South-Carolina.

THROUGH the politeness of a gentleman of the bar, on whose accuracy we rely, we have been favoured with the following impressive and eloquent *sentence*, passed on the inhuman SLATER, by Judge *Wilds;* which we have pleasure in communicating to the public, as doing no less honour to his head, as a sound and able Judge, than to his heart, as a virtuous and humane man.

JOHN SLATER! You have been convicted by a jury of your country, of the wilful murder of your own slave; and I am sorry to say, the short, impressive, uncontradicted testimony, on which that conviction was founded, leaves but too little room to doubt its impropriety.

The annals of human depravity might be safely challenged for a parallel to this unfeeling, bloody and diabolical transaction.

You caused your unoffending, unresisting slave to be bound hand and foot, and by a refinement in cruelty, compelled his companion, perhaps the friend of his heart, to chop his head with an ax, and to cast his body, yet convulsing with the agonies of death, into the water! And this deed you dared to perpetrate in the very harbour of *Charleston*, within a few yards of the shore, unblushingly in the face of open day. Had your murderous arm been raised against your equals, whom the laws of self-defence, and the more efficacious law of the land unite to protect, your crimes would not have been without precedent, and would have seemed less horrid. Your personal risk would at least have proved, that though a murderer you were not a coward. But you too well knew that this unfortunate man, whom chance had subjected to your caprice, had not, like yourself, chartered to him by the laws of the land, the

sacred rights of nature; and that a stern, but necessary policy, had disarmed him of the rights of self-defence. Too well you knew, that to you alone he could look for protection; and that your arm alone could shield him from oppression, or avenge his wrongs; yet, that arm you cruelly stretched out for his destruction.

The counsel, who generously volunteered his services in your behalf, shocked at the enormity of your offence, endeavoured to find a refuge, as well for his own feelings, as for those of all who heard your trial, in a derangement of your intellect. Several witnesses were examined to establish this fact, but the result of their testimony, it is apprehended, was as little satisfactory to his mind, as to those of the jury, to whom it was addressed. I sincerely wish this defence had proved successful, not from any desire to save you from the punishment which awaits you, and which you so richly merit; but from the desire of saving my country from the foul reproach of having in its bosom so great a monster.

From the peculiar situation of this country, our fathers felt themselves justified in subjecting to a very slight punishment, him who murders a slave. Whether the present state of society require a continuation of this policy, so opposite to the apparent rights of humanity, it remains for a subsequent legislature to decide. Their attention would ere this have been directed to this subject, but for the honour of human nature, such hardened sinners as yourself are rarely found, to disturb the repose of society. The grand jury of this district, deeply impressed with your daring outrage, against the laws both of God and man, have made a very strong expression of their feelings on the subject, to the legislature; and from the wisdom and justice of that body, the friends of humanity may confidently hope soon to see this blackest in the catalogue of human crimes, pursued by appropriate punishment.

In proceeding to pass the sentence, which the law provides for your offence, I confess, I never felt more forcibly the want of power to make respected the laws of my country, whose minister I am. You have already violated the majesty

of those laws. You have profanely pleaded the law under which you stand convicted, as a justification of your crime. You have held that law in one hand, and brandished your bloody ax in the other, impiously contending, that the *one* gave a licence to the unrestrained use of the *other*.

But, though you will go off unhurt in person, by the present sentence, expect not to escape with impunity. Your bloody deed has set a mark upon you, which, I fear, the good actions of your future life will not efface. You will be held in abhorrence by an impartial world, and shunned as a monster, by every honest man. Your unoffending posterity will be visited for your iniquity, by the stigma of deriving their origin from an unfeeling murderer. Your days, which will be but few, will be spent in wretchedness; and, if your conscience be not steeled against every virtuous emotion, if you be not entirely abandoned to hardness of heart, the mangled, mutilated corpse of your murdered slave will ever be present in your imagination; obtrude itself into all your amusements, and haunt you in the hours of silence and repose.

But, should you disregard the reproaches of an offended world; should you hear, with callous insensibility, the gnawings of a guilty conscience; yet remember! I charge you remember! that an awful period is fast approaching, and with you, is close at hand, when you must appear before a tribunal, whose want of power can afford you no prospect of impunity; when you must raise your bloody hands at the bar of an impartial, omniscient Judge! Remember! I pray you remember! whilst yet you have time, that God is just, and that his vengeance will not sleep forever.

Court of Oyer and Terminer.

NEW-YORK, 22d JUNE, 1804.

TRIAL FOR BIGAMY.

PRESENT: B. LIVINGSTON, J. B. PREVOST AND J. MORTON.

The People *v.* Thomas Hoag alias Joseph Parker.

The comedy of errors no longer a fable. That two men may so exactly resemble each other as to be mistaken by their most intimate acquaintance, can no longer be doubted, after perusing the following report of a very extraordinary law case. It is stated that this singular case has been the subject of two previous trials in the Justices' Court of *New-York*. In one, a nonsuit stopped the proceedings; in the other the Court decided that the prisoner was not the person supposed. Yet his accusers were so positive of his identity that they pursued the affair to the present trial. Such an astonishing instance of resemblance, as is clearly proved in this case, has perhaps never before been known.

THE prisoner was indicted, for that he *Thomas Hoag*, late of *Haverstraw*, in the county of *Rockland*, labourer, otherwise called *Joseph Parker*, now of the city of *New-York*, cartman, on the 8th of *May* 1798, at the said city of *New-York*, was lawfully married to *Susan Faesch*, and said *Susan*, then, and there had for a wife, and that the said *Thomas*, alias &c. &c. &c. afterwards, to wit, on the 25th day of *December*, 1800, at the county of *Rockland*, his said wife being then in full life, feloniously did marry, and to wife did take one *Catharine Secor*, &c. &c. &c.

To this the prisoner pleaded, *Not guilty*.

Mr. *Riker*, district attorney, prosecuted on the part of the people.

Washington Morton, and *Daniel D. Tomkins*, Esqrs. were of counsel for the prisoner.

The testimony in the cause was as follows: The first marriage was admitted by the counsel for the prisoner, to be as stated in the indictment, and that the wife was still alive.

On the part of the Prosecution,

Benjamin Coe testified, that he was one of the Judges of the Court of *Common Pleas*, in the county of *Rockland;* that he well knew the prisoner at the bar; that he came to *Rockland* in the beginning of *September* in the year 1800, and there passed by the name of *Thomas Hoag*; that there was a person with him who passed for his brother; but between those two persons there was no sort of resemblance; that the prisoner worked for the witness about a month, during which time he eat daily at witness's table; and he of course saw him daily; that on the 5th day of *December*, 1800, witness married the prisoner to one *Catharine Secor;* that witness is confident of the time, because he recollected that on that very day, one of his own children was christened; that during all the time prisoner remained in *Rockland* county, witness saw him continually, he was therefore as much satisfied that prisoner was *Thomas Hoag*, as that he himself was *Benjamin Coe*.

John Knapp testified, that he knew the prisoner in 1800 and 1801; he was then in *Rockland* county, and passed by the name of *Thomas Hoag;* that he saw him constantly for five months during the time the prisoner was at *Rockland;* that he was at prisoner's wedding; *that Hoag had a scar under his foot;* the way that witness knew it was, witness and *Hoag* were leaping together, and witness outleaped *Hoag*, upon which *Hoag* remarked, that he could not leap as well now as he formerly could, before he received a wound on his foot by treading on a drawing knife; that *Hoag* then pulled off his shoe and showed witness the scar under his foot, occasioned by that wound; the scar was very perceptible; witness was confident prisoner at the bar was *Thomas Hoag*.

Catharine Conklin [*formerly Catharine Secor, but since married to one Conklin*] testified, that she became acquainted with prisoner in the beginning of *Sept.* 1800, when he came to *Rock-*

land; he then passed by the name of *Thomas Hoag;* that witness saw him constantly; that prisoner shortly after their acquaintance, paid his addresses to her and finally on the 25th *December*, married her; that he lived with her till the latter end of *March*, 1801, when he left her; that she did not see him again until two years after; that on the morning of his leaving her, he appeared desirous of communicating something of importance to her, but was dissuaded from it by a person who was with him and who passed for his brother; that *Hoag* until his departure, was a kind, attentive and affectionate husband; that she was as well convinced as she could possibly be of any thing in this world, that the prisoner at the bar was the person who married her by the name of *Thomas Hoag;* that she then thought him, and still thinks him, the handsomest man she ever saw.

Here the prosecutor rested the cause.

DEFENCE. *Witnesses for Prisoner.*

Joseph Chadwick testified, that he had been acquainted with the prisoner, *Joseph Parker*, a number of years; that witness resides in this city, is a rigger by trade; that prisoner worked in the employ of the witness a considerable time as a rigger; that prisoner began to work for witness in *September*, 1799, and continued to work for him until the spring of 1801, that during that period he saw him constantly; that it appeared from witness's books, that *Parker* received money from witness for work, which he had performed on the following days, viz. on 6th of *October*, and 6th and 13th *December*, 1800; on the 9th 16th and 28th of *February*, and 11th *March*, 1801; that *Parker* lived from *May*, 1800, till some in *April*, 1801, in a house in this city belonging to Captain *Pelor;* that during that period, and since, witness had been well acquainted with prisoner.

Isaac Ryckman testified, that he was an inhabitant of this city; that he was well acquainted with *Joseph Parker*, the prisoner at the bar, and had known him a number of years; that witness and *Parker* were jointly engaged in the latter end of the year 1800, in loading a vessel for a captain *Tredwell*, of this place; that they began to work on the 20th day of *Decem-*

ber, 1800, and were employed the greater part of the month of *January*, 1801, in the loading of the vessel; that during that time the witness and *Parker* worked together daily; the witness well recollected that they worked together on the 25th day of *December* 1800; he remembered it because he never worked on a *Christmas* day before nor since; he knew it was in the year 1800, because he knew that *Parker* lived that year in a house belonging to Captain *Pelor;* and he remembered their borrowing a screw for the purpose of packing cotton into the hold of the vessel they were at work at, from a Mrs. *Mitchell*, who lived next door to *Parker;* that witness was one of the city watch and that *Parker* was also at that time upon the watch; and witness had served with him from that time to the present day upon the watch, and never recollected missing him any time during that period from the city.

Aspinwall Cornwall testified, that he lived in *Rutger*-street, and had lived there a number of years; that he kept a grocery store; that he knew *Parker*, the prisoner at the bar, in 1800 and 1801; that *Parker* then lived in Captain *Pelor's* house; that he only lived one year in *Pelor's* house; that *Parker* while he lived there traded with witness; that witness recollected once missing *Parker* for a week and inquiring, found he had been at *Staten* island, at work on board one of the *United States'* frigates; that excepting that time he never knew him to be absent from his family, but saw him constantly.

Elizabeth Mitchell testified, that she knew *Parker*, the prisoner at the bar well; that in the year 1800, he lived in a house adjoining to one in which the witness lived; that the house *Parker* lived in belonged to Captain *Pelor;* that witness was in habits of intimacy with *Parker's* family, and visited them constantly; that *Parker* being one of the city watch, she used to hear him rap with his stick at the door to awaken his family, upon his return from the watch in the morning; that she also remembered perfectly well, *Parker's* borrowing a screw from her on *Christmas* day in 1800, when she offered him some spirits to drink, but he preferred a glass of wine, which she got for him: the circumstance of her lending the screw to him, she

was the more positive of, from recollecting also that it was broken by *Parker* in using it; that *Parker* never lived more than one year in captain *Pelor's* house, and from that time to the present day, witness had been on the same terms of intimacy with *Parker's* family. She therefore considered it as almost impossible that *Parker* could have been absent from town any time without her knowing it; and she never knew him to be absent more than one week while he lived at *Pelor's* house.

James Redding testified, that he had lived in the city a number of years; that he had known *Parker* the prisoner at the bar, from his infancy; that *Parker* was born at *Roe* in *Westchester* county; that *Parker* in the year 1800 lived in Captain *Pelor's* house; that witness saw him then continually and never knew him during that time to be absent from town any length of time; that witness particularly remembered, that while *Parker* lived in Captain *Pelor's* house, witness sometime in the beginning of the month of *January*, 1801, assisted *Parker* in killing a hog.

Lewis Osborn testified, that he had been acquainted with *Parker*, the prisoner at the bar, for the last four years; that witness had been one of the city watch; that from *June* 1800, to *May*, 1801, *Parker* served upon the watch with witness; that at first *Parker* served as substitute, that is, one who in case of the absence of a regular watchman, supplies his place; that witness remembered that *Parker* a few days after *Christmas*, in 1800, was placed upon the roll of the regular watch, in the place of one *Ransom* who was taken sick; witness was certain it was in the period abovementioned, because that was the only time witness ever served upon the watch; that during the above period, witness and *Parker* were stationed together while on the watch at the same post; witness was certain that *Parker*, the prisoner at the bar, was the person with whom he had served upon the watch, and was confident, that during that time, *Parker* was never absent from the watch more than a week at any one time.

The prisoner's counsel here rested his defence.

Testimony on behalf of the prosecution continued.

Moses Anderson testified, that he had lived at *Haverstraw*, *Rockland* county; that he had lived there since the year 1791; that he knew the prisoner at the bar well; that he came to the house of the witness in the beginning of *September* 1800; that he then passed under the name of *Thomas Hoag;* that he worked for the witness eight or ten days; that from that time till the 25th of *December*, prisoner passed almost every *Sunday* at witness's house; that during prisoner's stay at *Rockland* county, witness saw him constantly; that if the prisoner was the person alluded to, he had a scar on his forehead, which he told witness was occasioned by the kick of a horse; he had also a small mark on his neck [those marks the prisoner had,] he had also a *scar under his foot between his heel and the ball of the foot*, occasioned, as he told witness, by treading upon a drawing knife; that *that scar was easy to be seen;* that his speech was remarkable; his voice being effeminate; that he spoke quick and lisped a little, [those peculiarities were observable in prisoner's speech,] that prisoner supped at witness's house the night of his marriage, in *December* 1800; that witness had not seen prisoner until this day, since prisoner left *Rockland*, which was between three and four years ago; that witness was perfectly satisfied in his own mind that prisoner was *Thomas Hoag*.

Lavinia Anderson certified, that she knew prisoner at the bar; his name was *Thomas Hoag;* that in *September*, 1800, he came to witness's house in *Rockland* county and worked for her husband eight or ten days, then worked for Judge *Suffrein;* every *Saturday* night, until the prisoner was married, he and a person who passed for his brother came to witness's and staid till *Monday* morning; that witness washed for him; there was no mark upon his linen; that prisoner, if he is *Thomas Hoag*, has a scar upon his forehead; he has also one under his foot; was certain of the mark under his foot, because she recollected that the person who passed as his brother having cut himself severely with a scythe and complaining very much of the pain, *Thomas Hoag* told him, he had been much worse wounded, and then showed the scar under his foot.

Witness also testified, that about a year ago, after a suit had been brought in the Justices' Court of this city, wherein the identity of the prisoner's person came in question, witness was in town, and having heard a great deal said on the subject, she was determined to see him and judge for herself; that accordingly she went to the prisoner's house, but he was not at home; she then went to the place where she was informed he stood with his cart; that she there saw him lying on his cart with his head on his hand; that in that situation she instantly knew him; that she spoke to him; when he answered her she immediately recognised his voice; that it was very singular, shrill, thick, hurried and something of a lisp, that *Hoag* had also a habit of shrugging up his shoulders when he spoke; this she also observed in prisoner; that prisoner said he had been told she was coming to see him, and it was surprising people could be so deceived, and asked witness if she thought he was the man; witness said she thought he was, but would be more certain if she looked at his forehead. She accordingly lifted up his hat and saw the scar upon his forehead, which she had often before seen; that prisoner then told her it was occasioned by the kick of a horse; witness added it was impossible that she could be mistaken, prisoner was *Thomas Hoag*.

Margaret Secor testified, that about four years ago she lived at *Rockland*, with her father *Moses Anderson;* that prisoner at the bar, *Thomas Hoag*, came to their house in *September*, 1800; that he remained in *Rockland* five or six months; that he had a scar on his forehead; that he used to come every *Saturday* night to her father's to pass *Sunday* with them; that she used to comb and tie his hair every *Sunday*, and thus saw the scar; that witness married about two years ago, and came immediately to live in this city; that after she had been in town a fortnight she was one day standing at her door, and she heard a cartman speaking to his horse; that she immediately recognised the voice to be that of *Thomas Hoag*, and upon looking at him saw the prisoner at the bar and instantly knew him; that as he passed her he smiled and said, How do you do cousin? that the next day he came to her house, and asked her how

she knew he was the man, witness replied she could tell better if he would let her look at his head; that accordingly she looked and saw a scar upon his forehead, which she had often remarked upon the head of *Hoag;* witness admitted she had mentioned her suspicions to her husband, and her husband had told prisoner of it and had brought him to the house; witness added she was confident prisoner was the person who passed at *Rockland*, as *Thomas Hoag*.

James Secor testified, that he had been married about two years and a half; that he brought his wife to town about a week after his marriage; that he knew *Hoag* in *Rockland* and had repeatedly seen him there; when he saw prisoner at his house in town, thought him to be the same person; witness's wife had mentioned to him that *Hoag* had a remarkable scar on his forehead, and when prisoner was at witness's house, he saw on his head the scar his wife had described.

Nicholas W. Conkle testified, that he lived in *Rockland* county; that he knew the prisoner at the bar; that his name was *Thomas Hoag;* that he could not be mistaken in the person; that *Hoag* had worked a considerable time for him; that during that time he had eaten at witness's table; that *Hoag* beinga stranger and witness understanding he was paying his addresses to *Catharine Secor*, witness took a good deal of notice of him, thought him a clever fellow, saw a great deal of him, lived in a house belonging to witness; when witness saw prisoner at this place he knew him instantly, his gait, his smile (which is a very peculiar one) his very look was that of *Thomas Hoag;* witness endeavoured, but in vain, to find some difference in appearance between prisoner and *Hoag;* he was satisfied in his mind that he is the same person. *Hoag* he thought was about twenty eight or thirty years of age; he thought *Hoag* had a small scar on his neck.

Michael Burke testified, that he lived in *Catharine*-street; that he formerly lived in *Haverstraw;* that he saw prisoner several times at *Haverstraw* before and after his marriage in *December* 1800; that he was as well satisfied as he could be of any thing that prisoner was the same person he knew in *Haver-*

straw; that about two years ago he met prisoner in the *Bowery;* it was at the time of the *Haerlem* races; prisoner spoke to witness, and said, am I not a relation of yours? witness replied, I don't know, prisoner said, I am, I married *Caty Secor.* Upon cross examination witness admitted that he and prisoner had had a quarrel respecting witness calling prisoner *Tom Hoag;* that the above conversation was after the trial in the Justices' Court; and witness when asked if he was at the trial, said he was not, though when interrogated particularly, whether he was not in the court-room at the time, admitted that he was.

Samuel Smith was called merely as to the character of one of the witnesses on the part of the prosecution, a Mr. *Knapp*, and testified that he bore an unexceptionable character.

Abraham Wendell testified, that he knew one *Thomas Hoag*, in the latter end of the year 1800: he was at *Haverstraw*, that he had been very intimate with him, and knew him as well as he knew any man; that he had worked with him; that he had breakfasted, dined and supped with him, and many a time had been at frolics with him; and that prisoner at the bar was the same man; that he had no doubt whatever about it; that about a year ago witness being in this city, was told by some persons, that *Hoag* had beat the *Haverstraw* folks in an action, wherein his identity had come in question; that witness told them he could know him with certainty; that they said, they would send him down to him, that day; that witness was aboard his sloop, saw prisoner at the distance of a hundred yards coming down the street, and instantly knew him, prisoner came up to him and said immediately, Mr. *Wendell* I am told you say you will know me; witness was as confident, prisoner is the person, as he was of his own existence.

Sarah Conklin testified, that she lives in *Haverstraw;* that in *September*, 1800, a person calling himself *Thomas Hoag* was at witness's house, was very intimate there, used to call her aunt, is sure prisoner is the person; never can believe two persons could look so much alike; *Hoag* and prisoner talk, laugh and look alike, would know *Hoag* from among a hundred

people by his voice; prisoner must be *Thomas Hoag:* had not seen prisoner since he left *Haverstraw* till to-day.

Gabriel Conklin testified, that he lived in *Haverstraw;* that he knew *Thomas Hoag;* that he was at witness's house in *September*, 1800, and often afterwards; prisoner is the same person, unless there can be two persons so much alike as not to be distinguished from each other; prisoner must be *Thomas Hoag; Thomas Hoag* had a scar on his forehead, and a small scar just above his lip, prisoner had these marks.

Further testimony in behalf of the prisoner.

James Juqar testified, that he had known *Joseph Parker* the prisoner at the bar for seven years past; that he had been intimate with him all that time; that they had both worked together as riggers until *Parker* became a cartman; knew *Parker* when he lived in Captain *Pelor's* house; never knew him absent from the city during that time for a day, excepting when he was working on board of one of the *United States'* frigates about a week at *Staten Island.* In the year 1799, prisoner hurt himself on board the *Adams* frigate, and he then went to his father's in *Westchester* county, and was absent near a month; he was very ill when he left town; witness went with him and brought him back again; he was not then quite recovered; recollects perfectly *Parker* and some other company passing *Christmas eve* at witness's house, the year that *Parker* lived in Captain *Pelor's* house, which was in 1800.

Susannah Wannell testified, that she had known prisoner for six years past; that he married witness's daughter; knew him when he lived in Captain *Pelor's* house; *Parker's* wife was then ill, and witness had occasion frequently to visit her; saw prisoner there almost daily; prisoner, excepting the time when he was first sick and went to his father's in *Westchester*, has never been absent from the city more than a week since his marriage with witness's daughter.

It was agreed between the attorney general and the counsel for the prisoner, that the prisoner should exhibit his foot to the jury, in order that they might see whether there was *that scar*

which had been spoken of in such positive terms by several of the witnesses on the part of the people.

Upon exhibiting his feet, not the least mark or scar could be seen upon either of them.

In further confirmation of prisoner's innocence, there was then produced on his behalf,

Magnus Beekman, who testified, that he was Captain of the city watch of the second district; that he was well acquainted with the prisoner, *Joseph Parker;* that he, *Parker*, had been for many years a watchman, and had done duty constantly upon the watch; that witness upon recurring to his books, where he keeps a register of the watchmen and of their times of service, found that prisoner, *Joseph Parker*, was regularly upon duty as a watchman, during the months of *October*, *November* and *December*, 1800, and of *January* and *February*, 1801, and particularly that he was upon duty the 26th *of December* 1800.

The jury without retiring from the Bar, found a verdict of NOT GUILTY.

A

BRIEF DISCOURSE,

SHOWING THE ORDER AND STRUCTURE OF A

LIBEL OR DECLARATION,

FROM

CONSETIO'S PRACTICE

OF THE

ECCLESIASTICAL COURTS.

LONDON, 1708.

Nihil dictum, quod non prius is a maxim, as true as it is general. So that to enlarge or say any thing in this discourse, more than what others (of great learning and practice,) have said before, is a thing I aim not at; neither would I have any so far mistaken in me, as think me guilty of so much vainglory and ostentation. Neither were it possible for me (or any else, as I think) to reduce this discourse to a better method than *Wesembeck* † has done, whose words I shall insert, with some additions out of other authors, which will render this discourse so compleat, as that the meanest capacity (our insipid proctors, I mean of) may form a libel, without inspecting their precedent books; which they can no more be without, than a cripple without his crutches. I question not but the learned advocates are so well stored with discourses of this nature, that this can be of little use to them.

1. *What a libel is.*
2. *How many and what are the parts of a libel.*
3. *How many sorts of libels.*
4. *What things are said to be proper to a libel.*

† Parat. ff. T. de edendo.

5. *What is the efficient cause of a libel.*
6. *The matter of a libel.*
7. *The form of a libel; deduced also from a syllogistical argument.*
8. *The next, and not the remote matter, ought to be expressed in a libel.*
9. *The end of a libel.*

A libel is said to be a diminutive, *a libro*, from a book; whence formerly a paper was offered: In general it signifies every writing: figuratively the matter is put for the thing contained in it. But properly in this argument, a libel is taken for the writing which contains the action: * Or a libel is nothing else but a fit conception of words, setting forth a specimen of the future sute. † According to *Lanfranc.* (*c. quoniam. de petition. n.* 7.) it is defined the lawyer's argument.

2. It is said to consist of three parts. (*Scil.*) 1. The major proposition; which shows a just cause of the petition. 2. The narration, or the minor proposition. Whereby is inferred (in the species of the fact propounded) that there is cause just for the petition. 3. The conclusion or the conclusive petition, which conjoins both the propositions, and includes the minor in the major. ‡ A libel therefore is a practical and judicial syllogism, as it were. Though *Speculator de Libelli confectione, Sect. quid Libellus, n.* 3. recites its parts somewhat otherways; for in the first place, he puts the cause of the libel, which is the major proposition: In the second place, the obligation, which is the minor proposition; and in the third place, the action, which is the conclusion: For the petition itself is said to be the action: the conclusion consists in the petition, and not in the words related. And this is the chief part of the libel, which ought especially to be regarded in civil actions; not so in criminal actions or causes, because in them there needs no conclusion. By this the * plaintiff concludes, justly desiring

* Alciat. in prax. fol. 18. Speculator de libell. conf. sect. 1.

† Ummius disp. 6. th. 8. n. 38.

‡ Alciat. ubi supra Jason. Zasius & alii in prin. Inst. de Action.

* Alciat. ut supra.

from the premises and the things propounded, that the defendant may be condemned, both in the principal and in the charges. *

3. In respect of the subject-matter of the libels, there are only two sorts in use; the one of which is conventional or civil, (*a conveniendo*, from convening) the other criminal, (*a crimine seu querimonia.*) † In respect of its form, it is either simple (which absolves or declares the action, in a continued speech or oration, as it were) or articulate, in which the merits of the cause are propounded by articles. †

4. The properties of a libel, or those things which are said to be particularly proper to a libel, are these, (*Scil.*) that it be round, (as the civilians term it) dilucid, concluding, not obscure, uncertain, nor general or alternative. ‡

5. The efficient cause of a libel is the law, which deposeth a libel to be offered: But it commands principally that it be offered to the Judge (seeing his office is implored upon this petition) and then also to the adverse party.

6. As to what respects the matter of a libel: It is to be offered in all causes, about which judgment is stirred up, and a suit is commenced betwixt two: and that as well in civil as criminal causes, &c. but not always in summary causes, (*viz.*) in executions: for in these, any manner of petition is sufficient, though it be without writing: like as when it is proceeded by way of inquisition, or where the office of the Judge is implored in an extraordinary manner.

7. The form of a libel, (although it ought especially to be drawn, according to the style and custom of every court, yet where there is no special custom extant,) ought to be drawn in writing; and in such manner, as that it may contain these five things, comprehended in these following verses.

Quis, quid, coram quo, quo jure petatur et a quo,
Recte compositus quique Libellus habet. *

* Speculator ubi supr. Sect. species. glos. in d. c. 1. Lanfr. c. quoniam. ad verb. petition. de prob. n. 1. Alciat. in prax. fol, 103. Ummius disp. 6. th. 8. Rosbach. pros. tit. 33.

† Oldendor. p. de forma Lib.

‡ Ferrar. in forma Lib. contr. opp. lib. &c.

* Hostiensis de Libell. obla. Alciat. ubi sup. fol. 18.

Each plaintiff and defendant's name,
And eke the Judge who tryes the same;
The thing demanded, and the right whereby
You urge to have it granted instantly:
He doth a libel right and well compose,
Who forms the same, omitting none of those.

But the particular form of a libel * consists in the conclusion, which (what it ought to be) *Jason in sect. huic autem n.* 13. *Institut. de Action.* copiously disputes; so also *Myns. in Inst. de Action.* At this day, such respect is had to the conclusion, that it be sufficient to gather from its form, of what nature the action is, though no name be expressed: which seems to have been otherways formerly, at least by the law of the *Codices.* To make this form the more dilucid and clear, we will dispose it into an argument or a syllogism, † *in Darii*, which shall in short comprehend the whole matter, and all the parts of a libel.

Every one who defames an honest man ought to be ecclesiastically punished.
A. G. *hath defamed a certain honest man*, J. G.
Therefore the said A. G. *ought to be ecclesiastically punished.*

8. Civil actions are either singular, general or universal, as was shown in the Practice. Those actions which are singular, are also either real, personal, or mixt, as has been shown. Now in a real action, the next cause, and not the remote, ought to be expressed, ‡ as for example, I demand ten pounds of *Titius* which I lent him, and I desire he may be condemned to pay me that sum: here now the contract, or the lending

* Ita formari debet ut ex narratis suficiat jus agendi implicite resultare et in postea explicite in probationibus declarari. Wesemb. ubi s. n. 8. Anchor cosil 148. n. 6.

† Lanfr. c. quoniam. de prob. ad verb. petition. n. 8.

‡ Lanfr. ubi s. n. 3. Myns. Inst. de Act. in Rub. n. 15. et Sect. omnium autem. n. 14, 15.

money, is the next cause in a real action, and it is the remote cause in a personal action; for the obligation or bond arising from the contract, is the next or nearest cause in a personal action, and the remote cause in a real action: wherefore in a real action, if you say in your libel, I ask ten pound of *Titius*, which he owes me upon bond; here your libel is so general, as it is in danger of being voided, if the defendant excepts against it: but if in this action, you say on this manner, I ask ten pound of *Titius* which I lent him, the libel is dilucid, by your making mention of the next cause: and so observe the quite contrary in personal action. † But in a general or universal judgment or action, there is no need of mentioning any cause.

9. The end of the libel is, that it may propound the plaintiff's desire, and instruct the Judge and the adversary, as to the nature of the future suit, and to be the foundation of judgment: for both the articles of the proofs are to be accommodated to the form of the libel, and the sentence is to be pronounced according to the same. Wherefore to the intent that the judgment be begun in due order, and be founded upon a certain thing, it is necessary that a libel be given by the plaintiff, though not admonished thereto: the omission whereof doth vitiate the proceedings. Whence a libel is deservedly ranked amongst the substantial acts of the proceedings: for no libel existing, the proceedings are rendered null, *&c.*

10. Agreeable to what has been said, I will here obviate the form of a libel, as it is offered before the Judge of the Ecclesiastical Courts. And in the first place, it must be drawn in the name and style of the Judge, as *Alciatus* has also observed in his form, set down in his practice, at fol. 18. (*viz.*)

In the name of God amen. *Before you the worshipful* H. W. *doctor of laws, principal official of the beautiful consistory court of* York, *&c. The party of* J. G. *against* A. G. *&c. alledgeth and complaineth, and propoundeth*, &c.

Imprimis, He doth propound and article, that the said *J. G.* was and is a man very honest, just and upright, of good fame,

† Lanf. ubi supra n. 3, 4, 5, 6.

life and honest conversation, aspersed, defamed, with no crime (at least such as is notorious) except what is afterward mentioned, and is commonly reputed, had, named and esteemed as such, &c.

Item, That notwithstanding the premises, the said *A. G.* out of a malign spirit, in the months of *A. M. I.* &c. in this present year, 1630, in one or other of the said months, within the said parish * of *D.* aforesaid, or some other place within the said parish, maliciously and out of an intent of defaming and injuring the said *J. G.* hath defamed and injured him, and hath said, uttered, &c. some reproachful and defamatory words, of and against the said *J. G.* and especially these words following, or the like in effect, (*viz.*) the said *A. G.* said and reported (though falsely,) diverse and sundry times, or at least once, speaking to the said *J. G.* thou hast got a wench with child, &c. The party doth propound and article, as to such a time and manner of speaking the words, &c.

Wherefore proof being made upon the premises, the party of the said *J. G.* doth request or petition, that the said *A. G.* for such excessive rashness in the premises, and concerning the same, may be corrected and punished according to your pleasure; and also that he may be condemned in charges, made and to be made in this cause, on the behalf of the said *J. G.* &c. *Mynsinger in Inst. de injuriis Sect. in summa*, concludes thus. Wherefore the plaintiff desires that (in order to repair his fame and good name,) the defendant aforenamed, may be compelled by you, and your definitive sentence, to disown, confess and declare publicly, that the said defamatory and injurious words, were inadvisedly and against the truth, spoke and uttered by him, &c. or otherways, that right and justice may be administered, &c.

* Ratio hujus apud Myns. Inst. de Action. Sect. Malef. et Sect. curare autem.

Laws of Maryland, 1807-8.

If this Journal be continued, it shall contain a regular list of such laws as are "*made and passed*" by the General Assembly of this state. Of those which are of importance to the community a summary will be given; but of those which are in their nature local or private, no more than the titles will be inserted. Gentlemen of the bar will confer a favour by sending similar abstracts of the laws of their respective states.

At a session of the GENERAL ASSEMBLY *of* MARYLAND, *begun and held at the city of* ANNAPOLIS, *the 2d of November*, 1807 *and ended the 20th of January*, 1808, *the following laws were enacted.*

CHAPTER 1. An act to settle and ascertain the salary of the members of the council for the ensuing year.

CHAPTER 2. An act authorizing *Thomas I. Patterson*, late sheriff and collector of *Dorchester* county, to complete his collection.

CHAPTER 3. An act authorizing *Joseph Green*, late sheriff and collector of *Charles* county, to complete his collection.

CHAPTER 4. An act authorizing *Nathaniel Rochester*, late sheriff and collector of *Washington* county, to complete his collection.

CHAPTER 5. An act to ratify and confirm the marriage articles of *Ely Dorsey* of *Ely*, of *Frederick* county, and *Araminta* his wife.

CHAPTER 6. A supplement to an act, entitled, An act for the benefit of *Robert Williams*, a free black man, and of his wife and children.

CHAPTER 7. An act for the support of *Elias Thompson* and *Mary Thompson.*

CHAPTER 8. An act to confirm an act, entitled, An act to alter, change and repeal such parts of the constitution and form of government of this state as relate to the division of *Saint Mary's* county into electional districts.

CHAPTER 9. An act to revive and aid the proceedings of the orphans' court of *Saint Mary's* county.

CHAPTER 10. An act for the relief of *John Dilworth* of *Frederick* county.

CHAPTER 11. An act for the relief of *John Troxel* of *Frederick* county.

CHAPTER 12. An act directing the register of wills of *Baltimore* county to deliver over to the persons therein named the last will and testament of *Robert Burney*.

CHAPTER 13. An act for the relief and benefit of the poor, and trustees of the poor, of *Washington* county.

CHAPTER 14. An act to alter the time of holding the county courts of *Queen Anne's* county.

By this act it is provided, that the county courts of this county shall be held on the first *Monday* of *May* and on the third *Monday* of *October* in each year.

CHAPTER 15. A supplement to an act, entitled, An act relating to the public roads in the several counties therein mentioned.

CHAPTER 16. An act authorizing a lottery to raise a sum of money for the purpose of building a bridge across the river *Moudcaly* in *Frederick* county.

CHAPTER 17. An act authorizing a lottery to raise a sum of money for the purpose of finishing the steeple of *St. John's* church in *Elizabethtown* in *Washington* county, and for other purposes.

CHAPTER 18. An act to lay out and make a public road in *Baltimore* county.

CHAPTER 19. A further supplement to the act, entitled, An act for appointing a wreckmaster in *Worcester* county.

CHAPTER 20. An act annulling the marriage of *Patrick Sim* and *Ariana Sim*.

CHAPTER 21. An act to lay out a certain road in *Harford* county.

CHAPTER 22. An act for the benefit of *Alfred Jones* of *Queen Anne's* County.

CHAPTER 23. An act for the relief of *Henry Hawkins Young* of *Montgomery* county.

CHAPTER 24. An act to make valid a deed from *Isaac Dixon* to *John Dashiell* for a part of a tract of land called *Dixon's Green*.

CHAPTER 25. An act for the benefit of the vestry of the *German Evangelic Lutheran* congregation in and about *Elizabethtown*, at *Saint John's* church, in *Washington* county.

CHAPTER 26. An act to incorporate the stockholders of *Hagerstown* bank.

CHAPTER 27. An act for the benefit of *Margaretta Chalmers*.

CHAPTER 28. A further supplement to the act, entitled, An act to regulate elections.

For the division of *Saint Mary's* county into four electional districts.

CHAPTER 29. A supplement to an act to appoint and authorize commissioners to review and lay out a part of the road herein mentioned in *Harford* county.

CHAPTER 30. An act annulling the marriage of *Britannia Marshall*, of *Dorchester* county.

CHAPTER 31. An act to extend *Centre* street in the northern precincts of the city of *Baltimore* and to erect a bridge therein across *Jones's* Falls.

CHAPTER 32. A supplement to an act, entitled, An act for the establishment of a school in *Caroline* county.

CHAPTER 33. An act to make valid the will of *Arthur Mac Dade*, late of *Cecil* county, deceased.

CHAPTER 34. An act to erect a new bridge over *Great Choptank* river in *Caroline* county.

CHAPTER 35. A supplement to an act, entitled, An act to prevent the going at large of swine in the village of *Hillsborough*, in *Caroline* county, and other purposes therein mentioned.

CHAPTER 36. An act for the relief of *James West*, an insolvent debtor.

CHAPTER 37. An act for the sale of the real estate of *James Winchester*, late of *Baltimore* county, deceased.

CHAPTER 38. A supplement to an act to establish a bank and incorporate a company, under the name of the *Farmers'* bank of *Maryland*, and for other purposes.

CHAPTER 39. An act to confirm certain deeds of conveyance made to *Joseph Leonard*, and other persons therein named.

CHAPTER 40. An act to enlarge the powers of the trustees of the poor of *Montgomery* county.

CHAPTER 41. An act for the benefit of the joined *Evangelic Lutheran* and *Evangelical Presbyterian* congregation of *Saint Paul's* church, in *Washington* county.

CHAPTER 42. An act to authorize the drawing of a lottery within the city of *Baltimore* for the purpose therein mentioned.

CHAPTER 43. A supplement to the act, entitled, An act authorizing a lottery for raising a sum of money for the rector and vestry of *Saint Thomas's* parish, in *Baltimore* county.

CHAPTER 44. An act to lay out and make a public road in *Baltimore* county.

CHAPTER 45. An act to open and make public a road to *Graceham*, in *Frederick* county.

CHAPTER 46. An act authorizing the justices of the levy court for *Baltimore* county to lease and exchange property therein mentioned.

The levy court is composed of justices of the peace. In *Baltimore* county eleven are appointed; in the other counties there are only seven. 1798, ch. 34. They meet annually between the first of *March* and first of *October* for the purpose of adjusting the ordinary expenses of their counties, making provision for the poor, opening or mending roads, building bridges, &c. 1788, ch. 4. 1790, ch. 13. 1794, ch. 53. 1795, ch. 37. 1796, ch. 32. 59. 1798, ch. 113.

CHAPTER 47. A supplement to an act authorizing the collection of certain ground-rents due on lots in the town of *Cumberland*.

CHAPTER 48. An act for the benefit of *James Griffin*, of *Saint Mary's* county.

CHAPTER 49. An act for the benefit of *John Burgoin* of *Cecil* county.

CHAPTER 50. An act to provide for transcribing and recording certain records and papers in the register's office of *Kent* county.

CHAPTER 51. An act to establish a public road in *Prince George's* county, from *Landsdale's* branch to intersect a road leading to the *Oyster Shell* landing, on *Patuxent* river.

CHAPTER 52. An act for quieting possessions and securing and confirming the estates of purchasers.

The preamble of this very important act recites that, Whereas deeds for conveying lands and other real estates have been executed and acknowledged by *femes covert*, and doubts are entertained whether they are effectual to convey the property therein contained, because the precise form of acknowledgment had not been pursued: and whereas doubts are also entertained whether deeds acknowledged under a power of attorney, in the name of the attorney, and not in the name of the principal, are valid: and whereas, &c. whether deeds, acknowledged before two justices of the peace, who were not justices of the county court, are valid: and whereas also deeds of bargain and sale have been executed without having been indented, under which deeds property had long been peaceably held; and if such deeds are adjudged to be void, *bona fide* purchasers will be greatly injured, and creditors deprived of the funds on which the credit was given, it having been obviously the meaning and intention of the parties to such deeds, that the property should be conveyed as expressed therein; and sound policy and justice dictate that all such defective deeds should be aided by law; therefore,

II. All deeds heretofore made for conveying or passing any estate of inheritance or freehold, or declaring or limiting any use or uses, trust or trusts, or for conveying any estates for above seven years, and all acknowledgments of a release or relinquishment of a right of dower in lands, tenements or hereditaments which have been acknowledged by *femes covert*, in which acknowledgments the precise form prescribed by law has not been observed, and all deeds for conveying any estate as aforesaid, in which the acknowledgment is made by the attorney in his own name, and not in the name of his principal, and all deeds for conveying any estate as aforesaid, heretofore made and acknowledged before two justices of the peace of any county in this state in which the acknowledgment is made, and all deeds of bargain and sale for conveying any estate as aforesaid, heretofore made and not indented, are hereby declared to be of the same effect and va-

lidity to pass the property, &c. as if such deeds had been, &c. provided it shall appear by the acknowledgment of such *femes covert*, that the same was made willingly, and out of the presence and hearing of the husband, or privately and willingly out of the hearing of the husband, or words to that effect; and provided also, that, in every other respect the aforesaid deeds have been executed, acknowledged and recorded, agreeably to the laws heretofore made on the subject.

III. Two justices of the peace, within their own county, have the same authority to take the acknowledgments of deeds for conveying property, as the judges of the county courts.

IV. All deeds heretofore made by any *feme covert* for conveying property as aforesaid, and all acknowledgments of release or relinquishment of a right of dower shall be good, &c. to pass an estate or bar the said right, &c. provided it shall appear by the acknowledgment, that she made the same voluntarily and out of the presence and hearing of her husband, and that the said deeds shall be in all other respects agreeable to the provisions of the law.

V. All deeds for the conveyance of property as aforesaid, which may be hereafter acknowledged by any attorney in fact, in his own name, shall be as valid as if acknowledged by him in the name of his principal; provided that in all other respects, &c.

VI. This act is not to affect any case where a recovery has been actually had in opposition to any defective deed in any court of justice in this state, or when any person is in the possession of the property in virtue of a compromise with the persons executing such defective deed or those claiming under them.

CHAPTER 154. Passed at the same session as supplementary to this act enacts:

1. When the person making any deed or conveyance for conveying or declaring or limiting any use in or for any lands, tenements or hereditaments, lying in this state, shall be at the time of the execution of, &c. out of the state, so that it cannot be acknowledged in the manner deeds are directed to be acknowledged within the state, it may be acknowledged before com-

missioners [*vide post* § 2, 3,] or by letter of attorney in the county court where the land or estate intended to be conveyed or the use thereof limited or declared doth lie, or before two justices of the peace of such county, or before any one of the judges of the *said* judicial districts in which the lands, &c. or in the manner heretofore prescribed by law.

2. The letter of attorney in virtue of which any such deed, &c. shall be proved by the oath or affirmation of the subscribing witnesses or any of them, before any one of the judges of some one of the judicial districts, or before the governor or chief magistrate, mayor of some corporation, a court of justice, or judge thereof. If it shall not have been proved before a judge of a judicial district, but before, &c. the oath shall be certified under the hand of the governor or chief magistrate and the seal of the state or county, or under the hand of the mayor and seal of the corporation where taken, &c. or under the seal of the court of justice where taken, &c. or under the hand of the judge and seal of the court when taken, &c. which letter of attorney, so proved shall be sufficient evidence of the execution, to authorize the court, judge, &c. to take the acknowledgment of any such deed.

3. If any person, who may reside or be out of the state, shall execute or be about to execute any deed, &c. which by law is necessary to be acknowledged and recorded, instead of the same being acknowledged by letter of attorney, as before directed, it may be lawful for the clerk of any county, where the lands, &c. lie, on application being made to him by the person intended to be the grantee, &c. and upon such grantee, &c. producing to the clerk the assent in writing of the intended grantor, &c. to such a commission, and naming in such assent the persons to whom such commissions shall issue, to issue a commission to two or more persons, residents of the state or country where such grantor, &c. may reside or be, authorizing the said commissioners or any two of them to take the acknowledgment, &c. And such deed so acknowledged and such acknowledgment, certified under *their* hands and seals of the commissioners and returned with the deed, &c. to the court whence the commission shall issue, shall be recorded, &c. and shall be as valid, &c.

4. Where any lands, &c. lying within this state, shall be conveyed, or any use declared or limited, by any deed, &c. wherein any *feme covert* shall be named as grantor, &c. for transferring her estate of inheritance in such lands, &c. or wherein such *feme covert* may have only right of dower, where any such *feme covert* shall at the time of her executing such deed, &c. reside or be out of the state, it shall and may be lawful for any such *feme covert* to acknowledge such deed, &c. before commissioners as hereinafter directed (*vide* § 5.) or before a justice of the supreme or circuit court of the *United States*, or before the governor or chief magistrate, the mayor of some corporation, court of justice, or any judge thereof, of the state or country where such deed, &c. may be acknowledged. And such justice, &c. shall examine such *feme covert* out of the presence and hearing of her husband whether she doth make such acknowledgment voluntarily. [To be certified as before *vide* § II.]

5. If any *feme covert*, who may reside or be out of this state, shall execute or be about to execute, any deed for conveying, declaring or limiting any use in lands, &c. or be about to relinquish her right of dower of, &c. lying within this state which by law is necessary to be acknowledged and recorded, instead of being examined in the manner herein before directed, it shall be lawful for the clerk of the county court where the lands, &c. lie, on application being made to him by the grantee, &c. and upon such grantee producing to him the assent in writing of such *feme covert* so intended to be examined, together with that of her husband, that such a commission shall issue, and naming in such written assent the persons to whom the said commission shall issue, to issue a commission to two or more persons, residents of the state or country where such *feme covert* may reside or be, authorizing such commissioners or any two of them, to take the private examination and acknowledgment of such *feme covert* in the manner herein before directed, when such *feme covert* shall be named as grantor, &c. Such deed, acknowledged before such commissioners or any two of them, in the manner, &c. and which examination and acknowledgment being certi-

fied under the hands and seals of, &c. and returned with such deed or conveyance and commission to the court whence the commission shall issue, shall be recorded, &c. and be as valid, &c.

6. Provided that the said deed be recorded within the time prescribed by the act of *November*, 1798. [ch. 103.] All and every deed, limitation or conveyance of lands, of whatsoever kind or nature it may be, required by the law of this state, to be acknowledged, and recorded, executed by non-residents, shall be acknowledged within the following time, viz. If made by a resident without the *United States* it may be acknowledged in the manner and form as set forth in the original act to which this is a supplement [1715, ch. 47.] within eighteen months after the time of execution of such deed, &c. if executed without the state of *Maryland*, but within the *United States* within six months from, &c.

7. Nothing herein contained shall have operation to prevent the execution according to the provisions of the law now in force.

8. The clerks of the courts of appeals are directed to record all deeds of conveyance, or extracts of deeds, required by law to be recorded, in the same manner that the late clerks of the general court could, &c. and receive the same fees.

9. The clerk shall retain and file in his office all such written papers purporting to be the assent of grantors or *femes covert* to the issuing of commissions, &c. [20th *January*, 1808.]

CHAPTER 53. An act for founding a medical college in the city or precincts of *Baltimore*, for the instruction of students in the different branches of medicine.

CHAPTER 54. An act authorizing *Alexis Boone*, late sheriff of *Prince George's* county, to complete his collections.

CHAPTER 55. A further supplement to an act, entitled, An act for the relief of sundry insolvent debtors.

This act was passed in order to define what should be deemed such an improper preference of creditors within the 9th section of the Insolvent law of *November*, 1805, and will be found in a note on that section, *post*.

Before the act of 1805, every insolvent was obliged to petition

the legislature for an act to relieve him from his difficulties. In order to avoid this serious incroachment upon their time, an act was passed vesting in the county courts of the respective counties the power of extending the benefit to those persons who are named in the first section or others who should apply to such courts before the first of *January* 1810, provided that previous to his application the debtor should give at least two months' notice of his intention in one newspaper printed in the city of *Baltimore* and in some other newspaper printed most convenient to the residence of such applicant, and also give such notice by advertisements set up at the most public places in the county where he resided. *Vid.* § 26.

The several supplements will be found inserted as notes to such parts of the original law, which follows, as they are intended to explain or modify.

II. On application of a debtor, to the county court of the county in which he resides, or to any judge thereof in case of the actual confinement * of such applicant by petition in writing, offering to deliver to the use of his creditors all his property, real, personal or mixed (the necessary wearing apparel and bedding of himself and his family excepted) to which he is in any way entitled, a schedule whereof (on oath or affirmation) as the case may require, together with a list of the creditors of the person so applying, on oath or affirmation, as far as he can ascertain them, shall be annexed to, or accompany such petition, the county court shall direct personal notice of such application to be given to the creditors, or to as many of them as can be served therewith, or their agents or attornies, or direct notice of such application to be advertised in the most public places of the county where said debtor resides, or to be inserted in some newspaper, for such time as they may think proper, and on the appearance of the creditor, or neglect to appear on notice, at the time or times and place appointed, the county court shall administer to the petitioning debtor, the

* By the supplemental act of *November*, 1806, chapter xcvii. it is not necessary that the applicant should be in actual confinement.

following oath or affirmation, as the case may require: "I, A. B. do swear, or solemnly, sincerely and truly declare and affirm, that I will deliver up, convey and transfer to my creditors, in such manner as the county court shall direct, ALL my property that I have, or claim any title to or interest in, and all debts, rights and claims, which I have, or am any way entitled to, in possession, remainder or reversion, (the necessary wearing apparel and bedding of myself and family excepted); and that I have not directly or indirectly, at any time, sold, conveyed, lessened or disposed of, for the use or benefit of any person or persons, or intrusted any part of *his* monies or other property, debts, rights or claims, thereby to defraud my creditors, or any of them, or to secure the same to receive or expect any profits, benefits or advantages thereby." And the county court shall thereupon name such person, as a majority of the creditors in value, their agents or attornies, shall recommend, to be the trustee for the benefit of the creditors of the petitioning debtor, or in case of non-attendance of the creditors, or of their not making a recommendation, the county court shall name such person as they shall think proper, to be trustee.

III. No person shall be entitled to the benefit of this act, unless the court shall be satisfied, by competent testimony, that he has resided the two preceding years within the state of *Maryland prior to the passage of this act;** and unless, at the time of presenting his petition as aforesaid, he shall produce to the court, the assent in writing of so many of his creditors as have due to them the amount of two-thirds of the debts due by him at the time of the passing of this act, or at the time of his application to the court for the benefit of it. Foreign creditors, not residing within the *United States*, or not having agents or attornies therein duly authorized and empowered to act in their behalf, shall not, for any purpose, be considered as creditors within the meaning of this clause. The court or any judge during the recess of the court may, without the assent of the cre-

* Or, "next before the making of his application." Vid. Sup. Act. November 1806. chap. 98.

ditors, order to be discharged from custody any petitioner, who may at any time be in actual confinement in virtue of any process issued, or that may be issued, in pursuance of any debt at this time due and owing, or at the time of his application to the court for the benefit of this act, which discharge is hereby declared to be a release only of the person of such debtor, but not of his property, unless the assent in writing of two-thirds in value of the creditors aforesaid be obtained.* [*vide post.* xi.]

IV. Before such trustee proceeds to act, he shall give bond for the faithful performance of his duty to the state of *Maryland*, for the use of the creditors of the petitioning debtor, in such penalty, as the court shall direct, which shall be recorded in the office of the county court, and a copy thereof certified under the hand of the clerk of said court, shall be good evidence in any court of law or equity of this state. If any trustee appointed by virtue of this act shall refuse to act, or die, or neglect to give bond as aforesaid in a reasonable time to be judged of by the court, or be removed by the court for misbehaviour, the court shall appoint such person as they shall think proper in his place, who shall give bond as aforesaid, and on giving such bond (in case the said debtor had conveyed his property to the former trustee) he shall immediately be vested with all the property of every kind, and all the debts, rights and credits of the said debtor, as completely as the former trustee was vested with the same.

V. Upon the petitioning debtor's executing and acknowledging a deed to the trustee, which deed is directed to be recorded within the time limited by law, conveying all his property, real, personal and mixed, and all debts, rights and claims, agreeably to the oath or affirmation of such debtor, and on his delivery, to the trustee of all his property which he shall have in possession, and of his books, papers and evidence of debts of every kind, and the trustee certifying the same, in writing to the county court, it shall be lawful for the court to order that the debtor shall be discharged, as well from all debts,

* By the act of November, 1807, chapter 150. corporate bodies, executors, administrators and trustees are authorized to sign their assent to such release when they shall deem it right and proper.

covenants, contracts, promises and agreements, due from or owing or contracted in his individual, as also in a copartnership capacity, by him, before the passage of this act, or at the time of his application to the county court for the benefit of this act, and by virtue of such order the debtor shall be discharged. No person who has been guilty of a breach of the law, and hath been fined, or is liable to be fined for such breach, shall be discharged from the payment of any fine incurred for any breach of the laws of this state: any property which the debtor shall hereafter acquire by gift, descent, or in his own right, by bequest, devise or in any course of distribution, shall be liable to the payment of the said debts. The discharge of such debtor shall not operate so as to discharge any other person from any debt.

VI. The court may allow such petitioning debtor to retain the necessary wearing apparel and bedding of himself and family.

VII. The court may direct any trustee to be appointed by virtue of this act to sell and convey the property conveyed to him by the petitioning debtor, at such time, and on such terms and conditions, as they shall think most for the advantage of the creditors, and the produce thereof, after satisfying all judgments, incumbrances and liens, shall be divided among the creditors agreeably to their several respective claims. But no judgment to be entered after the passage of this act, or after the time of his application to the court for the benefit of it, against any debtors who shall take advantage of this act, shall be a lien on his real property; nor shall any process against his real or personal property have any effect thereon, except writs of *fieri facias* actually and *bona fide* laid before the passing of this act, or before the time of his application to the county court for the benefit of it.

VIII. Any trustee may sue for, in his own name, and recover any property or debt assigned to him by a debtor; and may also prosecute to judgment any suit commenced by the debtor before his appointment.

IX. If any creditor, on the application of any such debtor to the court, or within two years thereafter shall allege in

writing to the court, that such debtor hath directly or indirectly sold, conveyed, lessened or otherwise disposed of, or purchased in trust for himself or any of his family or relations, or any person or persons, intrusted or concealed, any part of his property of any kind, or any part of his debts, rights or claims, thereby to deceive or defraud his creditors, or any of them, or to secure the same, or to receive or expect any profit or advantage thereby, or that he has passed bonds, or other evidences of debt, either without consideration, or on improper consideration, or lost *more than one hundred dollars by gaming* at any one time,* or hath assigned or conveyed any of his property with intent to give an undue and *improper preference*† to any creditor or security, before the passage of this act or before the time of his application to the court, for the benefit of it, the court may thereupon, at the election of the creditor making such allegation, either examine the debtor, and any person to whom he may have made any conveyance of his property, or passed bonds of evidences of debt as aforesaid, on interrogatories (of which interrogatories the person or persons answering the same shall, at the election of the person or persons making the allegation, be furnished with a copy) on oath or affirmation, touching the subject of the said allegations, or direct an issue or issues in a summary way, without the form of an action, to determine the truth of the same. And if, upon the answer of the interrogatories, or the trial of the issue or issues by a jury, such debtor shall be found guilty of, &c. he shall be for ever precluded from any benefit of this act. And in case such debtor or other person shall, at any time thereafter, upon any indictment found in the county court of the county in which such debtor may reside, or in the county

* By the supplementary act of November, 1807, chapter 150. no debtor shall be precluded from obtaining, &c. unless such *losing* shall have happened within the space of three years next before the application of, &c.

† By the act of November, 1807, chapter 55. any deed, conveyance, transfer, assignment or delivery of any property, real, personal or mixed, of any debts, rights or claims, to any creditor or security, made by any person with a view or under an expectation of being or becoming an insolvent debtor, is such an improper preference as is here intended.

where such oath or affirmation shall have been taken or administered, be convicted of wilfully, falsely and corruptly swearing or affirming to any matter or thing to which he shall swear or affirm by virtue of this act, he shall suffer as in case of wilful and corrupt perjury, and be for ever debarred from any benefit of this act.

X. The court may allow any trustee, to be appointed by virtue of this act, such commission for his trouble as they shall think reasonable, not exceeding eight per cent. If any complaint shall be made to the county court of the conduct of any trustee by any creditor interested in the distribution of any estate, or if any trustee hath or shall become insolvent, the court may call such trustee before *him*, and inquire into the cause of complaint in a summary way and make such rules and orders as shall be judged necessary for the accomplishment of the object of the trust, and punish the trustee as for a contempt in case of his not obeying the same; and if they think it necessary they may remove the trustee and appoint another person in his place.

XI. If any debtor, who shall petition in virtue of this act, shall be imprisoned at the time of exhibiting such petition, it shall be lawful for the court or any judge thereof to order the sheriff or other officer in whose custody he shall be to bring him before such court or judge at a certain time, in the order to be appointed, for the purpose of taking the oath or affirmation herein before mentioned. The sheriff or other officer shall obey the order, and shall be entitled to a preference after the discharge of all liens on the debtor's estate, to all other creditors, in the payment of his account against the debtor for legal fees of imprisonment, and his reasonable expenses in carrying the debtor to the court or judge. The court or any judge thereof may direct that the body of such debtor shall be discharged from imprisonment, and appoint a time when such debtor shall appear before the court, to answer interrogatories which his creditors may propose to him, on not less than three months' notice as aforesaid. Such discharge from imprisonment shall not operate as a discharge of any of the debts of

the imprisoned debtor; and the imprisoned debtor at the time of his discharge, if required by the court, or any judge thereof, shall enter into bond with such penalty and security as the court, or any judge thereof, shall direct and approve, conditioned for his personal appearance at such time or times as the said court, or any judge thereof, shall direct, to answer the allegations of his creditor or creditors, according to the provisions aforesaid; and if the debtor shall not enter into bond, then such debtor shall remain in confinement until the application (if objected to) shall be decided on.

XII. The court may, by order, limit and appoint the time for creditors to bring in and declare their claims, and may examine such creditors, and also the debtor, on oath or affirmation, concerning the same, and on any contested claim, may, if they think proper, order the same, or any fact concerning the same, to be tried on an issue framed for that purpose, and may order any part of the petitioning debtor's estate to be set apart and retained for the eventual satisfaction of any contested claim, or to be brought again into distribution. If any creditor, to whom a real debt is due, shall collude with the debtor to gain an undue preference in the satisfaction of his debt, or for concealment of any part of the debtor's estate or effects, or shall contrive or concert any acknowledgment of the debtor, by parol, or in writing, or any kind of security, to give false colour to his claim for more than is *bona fide* due, such creditor shall lose his debt truly due, and shall be totally excluded in the distribution.

XIII. If the debtor shall be arrested or imprisoned on any process sued out on any judgment or decree obtained against him, for any debt, damage or costs contracted, owing or growing due, before the time of his application to the court for the benefit of this act, the court, out of which such process issued, or any judge thereof of the court where the said debtor may be arrested or imprisoned, on application made to them, shall and may discharge such debtor on motion; and if the debtor shall be arrested or imprisoned on any process for the recovery of any debt, damages or costs, contracted, owing or growing due before the time of his application to

the court, the court, before whom such process shall be returned, shall and may discharge such debtor out of custody on his common appearance being entered, without any special bail. The discharge of such debtor shall not acquit or discharge any other person from such debt, damages or costs, but all such persons shall be answerable in such manner as they were, before the passing of this act, or before the time of their application to the court for the benefit of this act.

XIV. All proceedings under this act shall be recorded by the clerk of the county court in which such debtor shall reside, who shall be entitled to the same fees as are fixed by law for services in other cases, which shall be paid at the time of obtaining the discharge.

XV. In all appointments of trustees under this act by the court, in the room of any person before appointed, the court shall consult the creditors, and govern themselves by the choice of a majority of them in value, unless upon notice being given by public advertisement, or in such manner as they shall think reasonable, the said creditors shall neglect to make such choice.

XVI. No person who shall apply for the benefit of this act, who shall not execute a deed for all his estate, real, personal or mixed, to any trustee appointed in virtue of this act, within one month after the appointment of such trustee, and bond given by him according to the provisions of this act, shall have any benefit of this act.

The following are the vouchers required in the court of *Baltimore* county.

1. The petition.

2. Schedule of property and debts.

3. Certificate of the assent of creditors, to the amount of two-thirds in value.

4. Affidavit of petitioner and one or more credible persons, that the petitioner has resided two years, &c.

5. Certificate of two printers, that the notification of the intended application (of which a copy is annexed) was inserted in their papers respectively for the space of two months, every other day.

6. Affidavit of the person by whom the notification was posted, naming the places and times, and annexing a copy.

The first supplement, *November*, 1806. ch. 98. gives authority to the county court or any judge of the county in which the petitioner resides, to extend the benefit of the act to any debtor who shall comply with the requisites of the law, and satisfy the court or judge by competent testimony that he has resided two years within this state next before the making of his application.

The next supplement, *November*, 1807, ch. 55. is intended to dissipate the doubts that were entertained as to the construction of the words "undue preference," &c. in the ninth section of the original act.

2. Whereas by the twenty-first and last section of the original law to which this is a supplement, any debtor not named in the original law, who is or hereafter may be in actual confinement, and who applies for the benefit of that law under the provisions of the twenty-first section, is placed in a very different situation from that of a debtor named in the law who should be in confinement, inasmuch as the former must apply to the court of his county, which is only in session twice a year, and is not permitted to apply to a single judge out of term time, and must also give two months' notice of his intended application; therefore, be it enacted, &c. [*here follows* a section in the words of the eleventh section of the original law, to which the reader is therefore referred.]

3. The third section of this supplement invests corporate bodies, executors, administrators and trustees with power to sign their assent to the release of any insolvent debtor.

The third supplement, *November*, 1807, ch. 150. relates to the proof of gambling, which is restrained to three years next preceding the time of application.

CHAPTER 56. An act to prevent swine from going at large in the town of *Belle-Air*, in *Harford* county.

CHAPTER 57. A further supplement to the act, entitled, An act to lay out, and make a public road from the *Black House* to the *Pennsylvania* line, in *Harford* county.

CHAPTER 58. An act to extend further the powers of the levy court of *Allegany* county, relative to roads in said county, and for other purposes.

CHAPTER 59. An act to lay out, straighten and confirm a certain road in *Harford* county.

CHAPTER 60. A further supplement to an act, entitled, An act for erecting a village at *Choptank* bridge in *Caroline* county, and for other purposes.

CHAPTER 61. A supplement to an act, entitled, An act to open and extend the road leading from *Whittingham's* bridge, at *Princess Anne* town, in *Somerset* county, to the plantation of *George Pollitt*, deceased, until it intersects the road leading from *Salisbury* to *Stephens's* ferry at the plantation of *Josh. Morris*.

CHAPTER 62. An act to lay out and make a public road in *Anne Arundel* county.

CHAPTER 65. An act authorizing *Robert Beatherbury*, of *Somerset* county, to complete his collection.

CHAPTER 66. An act authorizing and directing the sales of certain lands lying in *Worcester* county, belonging to *William Fleming*, deceased.

CHAPTER 67. A supplement to the act, entitled, An act authorizing the drawing of a lottery to defray the expense of building a masonic hall in the city of *Baltimore*.

CHAPTER 68. An act to incorporate a Fire Insurance Company in the city of *Baltimore*.

Whereas it is represented to this general assembly, that the establishment of an institution in the city of *Baltimore*, for insuring buildings and personal property of certain descriptions from loss or injury by fire, would be of great public utility, by alleviating the distress to which individuals are exposed, particularly in cities and towns, by affording them additional security to commercial transactions, facilitating internal transportations, and thereby contributing to an increase of the wealth of society; therefore,

II. The capital stock of the said company shall consist of five hundred thousand dollars in shares of fifty dollars each.

III. Commissioners to receive subscriptions.

IV. Commissioners in *Baltimore* to conduct the operations of the company until superseded by the appointment of directors.

V. Manner of paying the subscriptions.

VI. The subscribers and their successors declared to be a body politic and corporate.

VII. When a meeting is to be called. Twelve directors to be elected annually, who may appoint a president and fix his salary.

VIII. On choosing directors the stockholders shall be entitled to vote, for every share not exceeding ten, one vote each: for every two shares above ten and not exceeding twenty, one vote: for every four shares above twenty and not exceeding forty, one vote: for every six shares above forty and not exceeding sixty, one vote: for every eight shares above sixty and not exceeding eighty, one vote: for every ten shares above eighty and not exceeding one hundred, one vote: for every twenty shares above one hundred and not exceeding one hundred and sixty, one vote: but no person or body politic shall be entitled to more than thirty votes.

IX. The affairs shall be conducted by a president and directors. They shall have power to make insurances against fire, on lives, on inland transportations of goods, wares, merchandizes and country produce, and to invest the funds in any stock which in their judgment may be most advantageous to it: to appoint a secretary and such other clerks as may be necessary and fix their salary: to ordain such by-laws, ordinances and regulations, as shall appear to them necessary and be not inconsistent with the constitution and laws of this state, or of the *United States:* to hire or purchase a suitable building, and generally to conduct the entire business to the objects of the company. They shall keep fair entries of their transactions which shall be at all times open to the inspection of the stockholders. The president, or such person as may be appointed by the directors to supply his place, and four directors shall form a quorum, and all questions shall be decided by a plurality of votes.

X. All policies shall be signed by the president, attested by the secretary and sealed with the common seal. All losses shall be adjusted by the president and board of directors and paid agreeably to the policy, out of the funds of the company.

XI. The corporation shall apply all sums of money received by them *for premiums* to the payment of losses in the first instance, and to make up the amount of their original capital whenever it shall have suffered any diminution by losses. Dividends of the nett profits shall be made at such periods as the president and directors may think proper, not oftener than once in six months, and paid to the stockholders or their legal representatives. If a dividend shall at any time be declared, of a greater amount than the nett proceeds of the company at the time of making the same, each director who consented thereto, shall be liable for it in his individual capacity, and bound to contribute to make good the deficiency in the capital stock occasioned by such improper dividend.

XII. The corporation shall not be competent to purchase or hold any real property, other than such as may be recovered by them for premiums, and as may be necessary for their immediate accommodation in business.

XIII. No stockholder or member of the company shall be answerable in his individual capacity for any contract of the company, nor for any losses, deficiencies or failures of the capital stock, except in the case of a director declaring an improper dividend, as above.

XIV. The stock of the institution is personal and not real estate, and may be transferred on the books of the company in person or by power of attorney. No stockholder indebted to the company can make a transfer or receive a dividend, until such debt is paid or secured to the satisfaction of the president and board.

XV. The president and directors may call a general meeting of the stockholders. Any number of stockholders not less than forty, who, together shall be proprietors of one thousand shares, may apply to the president and directors to call such meeting, and upon their refusal, may do so themselves.

XVI. If the annual election should not take place at the time appointed, the corporation shall not for that reason be dissolved; but such election shall be held on such convenient day as may for that purpose be fixed on by the president and directors.

XVII. This act shall continue in force until the first day of *February*, 1820, and until the end of the next session of the assembly which shall happen thereafter.

CHAPTER 69. An act to provide for the transcribing of certain land records in *Charles* county, and for making out an alphabet to the same.

CHAPTER 70. A further supplement to an act, entitled, An act to incorporate an insurance company in *Baltimore* town.

CHAPTER 71. An act to encourage the destruction of crows in the several counties therein mentioned.

CHAPTER 72. An act to lay out and make public a road therein mentioned in *Harford* county.

CHAPTER 73. An act for the relief of *Mary Gwinn*, of *Frederick* county.

CHAPTER 74. An act to authorize and empower the levy court of *Prince George's* county to assess a sum of money for the purpose therein mentioned.

CHAPTER 75. An act to lay out and make a public road in *Harford* county.

CHAPTER 76. An act to quiet the possessions and fix the lines of the lots of ground fronting on the west side of *Philpot* street, between *Wilkes* street and *Thomas* street in the city of *Baltimore*.

CHAPTER 77. An act for the preservation of the breed of wild deer in *Somerset* county.

CHAPTER 78. An act to change the place of holding the first election in the district of *Baltimore* county.

CHAPTER 79. An additional supplement to the act, entitled, An act to ascertain the allowance to jurymen and witnesses of the general court, and the several county and orphans' courts in this state.

I. There shall be allowed to each grand and petit juryman attending the county courts, and each petit juryman attending

the orphans' courts the sum of two dollars *per diem* for his attendance. But this act does not extend to *Baltimore*, *Allegany*, *Harford*, *Calvert*, *Somerset* and *Frederick* counties.

II. Repeals such acts as are repugnant with this law.

CHAPTER 80. An act to lay out and open a road in *Frederick* county.

CHAPTER 81. An act to build a bridge and open a road in *Caroline* county.

CHAPTER 82. An act to authorize and empower the levy court of *Prince George's* county to assess and levy a sum of money for the support and maintenance of *Thomas Gentle*.

CHAPTER 83. An act for the benefit of *Catherine Johnson*, of *Charles* county.

CHAPTER 84. An act authorizing a lottery for raising a sum of money to build a church in *Charles* county.

CHAPTER 85. An act for the relief of *Anne Terry*, of *Kent* county.

CHAPTER 86. An act for the relief of *Henry Waller*, of *Kent* county.

CHAPTER 87. An act authorizing a lottery to raise a sum of money for the vestry of *Saint John's* parish, in *Harford* and *Baltimore* counties.

CHAPTER 88. An act for the relief and benefit of *John Hebb*, of *Saint Mary's* county.

CHAPTER 89. A supplement to an act, entitled, An act for the relief of *John Booth*, and for confirming his title in certain lands therein mentioned.

CHAPTER 90. An act authorizing a lottery to raise a sum of money to purchase a fire engine, and finish the church in *Westminster* town, in *Frederick* county.

CHAPTER 91. An act to confirm a certain road therein mentioned.

CHAPTER 92. An act to make public a road in *Charles* county.

CHAPTER 93. An act for the relief of *Samuel Thomas*, *James Colston* and *Benjamin Benney*, executors of *Charles W. Benney*, deceased, securities of *Philemon Willis*, late sheriff of *Talbot* county.

CHAPTER 94. An act authorizing *Jasper E. Tilly*, late sheriff of *Anne Arundel* county to complete his collection.

CHAPTER 95. An act for the relief of *Nathaniel L. Chew*, *Peter Miles* and *Robert Nesbit*, of *Baltimore* county.

CHAPTER 96. An act authorizing *Nathaniel Oldham*, *Absalom Oldham* and *James Cochran*, to complete their collections.

CHAPTER 97. A supplement to an act, entitled, An act for founding a college in the city or precincts of *Baltimore*, by the name of *Baltimore* college.

CHAPTER 98. An act to vacate a certain certificate therein mentioned.

CHAPTER 99. A supplement to an act, entitled, An act authorizing the proprietors of the *Frenchtown* and *New-Castle* water and land stages to open a road from *Frenchtown* in *Cecil* county, to intersect the divisional line between this state and the state of *Delaware* at a road laid out by the commissioners of *New-Castle* county, in the state of *Delaware*.

CHAPTER 100. An act for the opening of *Bridge-street*, in the precincts of the city of *Baltimore*.

CHAPTER 101. An act for the relief of *Martin Brown*, an insolvent debtor of *Saint Mary's* county.

CHAPTER 102. An act to authorize a lottery to raise a sum of money for the purpose of finishing the *Elkton* academy, purchasing philosophical apparatus for the same, and for paving and improving the streets of *Elkton*, in *Cecil* county.

CHAPTER 103. An act annulling the marriage of *Joseph Boyd* and *Elizabeth* his wife.

CHAPTER 104. An act to lay out and make a public road from *Thomas Richardson's* mill, in *Montgomery* county, to intersect the main road leading to the town of *Bladensburg*, in *Prince George's* county.

CHAPTER 105. An act for the relief of the heirs of *Levin Woodford*, of *Dorchester* county.

CHAPTER 106. An act to lay out and open a road from *Bond-street* on *Fell's Point* to intersect the *York* turnpike road.

CHAPTER 107. An act to release to *Richard Trimble* the right of the state of *Maryland* to the property therein mentioned.

CHAPTER 108. An act to authorize the levy court of *Anne Arundel* county to assess and levy a sum of money for the purposes therein mentioned.

CHAPTER 109. An act to confirm and make public a certain road therein mentioned.

CHAPTER 110. An act to incorporate the contributors to the *Baltimore* general dispensary.

CHAPTER 111. An act authorizing the drawing of a lottery for the benefit of the college of medicine of *Maryland.*

CHAPTER 112. An act to lay out and open a straight road from *Forguson Smith's* to *Marley Mills*, in *Cecil* county.

CHAPTER 113. A further supplement to the act, entitled, An act for the regulation and improvement of *Denton*, in *Caroline* county.

CHAPTER 114. An act to prevent the anchoring of vessels in the fisheries in *Susquehannah* river, and at the head of the *Chesapeake* bay.

CHAPTER 115. An act relative to writs of *capias ad satisfaciendum.*

I. From and after the first day of *January* next, any *sheriff*, *coroner* or *constable*, directed to serve a writ of *capias ad satisfaciendum*, shall be bound to accept of the amount of such execution in the same manner that he is bound to receive such payment when authorized to execute a writ of *fieri facias.* Payment made to any sheriff, &c. directed to give, &c. shall be of the same effect as a like payment made to any sheriff directed to execute a writ of *fieri facias.* The plaintiff, at whose suit such *capias* issued, shall have the same remedy for the recovery of such money from the sheriff, &c. and their securities, that such plaintiff now, &c. [Passed 20th *Jan.* 1808.]

CHAPTER 116. A supplement to the act, entitled, An act to amend and explain the thirty-third section of an act, entitled, An act for the more effectually paving the streets of *Baltimore* town, in *Baltimore* county.

CHAPTER 117. An act authorizing *John Mitchell*, late sheriff and collector of *Caroline* county to complete his collection.

CHAPTER 118. A supplement to an act authorizing a lottery for raising a sum of money for repairing *Saint George's* church on *Deer* creek in *Harford* county.

CHAPTER 119. An act to correct a mistake in the beginning of lot number twenty-two in the town of *Vienna*, in *Dorchester* county.

CHAPTER 120. An act to appoint and authorize commissioners to review and lay out the road therein mentioned in *Harford* county.

CHAPTER 121. A supplement to the act, entitled, An act for the benefit of *Margaret Chalmers*.

CHAPTER 122. An act to enable *Margaret Hammond* and *Harriet Hammond*, of *Baltimore* county, to erect a bridge across *Patapsco* river, at a place called *Hammond's Ferry*.

CHAPTER 123. A supplement to the act, entitled, An act to incorporate the Charitable Marine Society of *Baltimore*.

CHAPTER 124. An act to continue certain acts of assembly.

I. All acts of assembly, which are limited to continue to the end of the present session, or which would expire during the same or before the end of the next assembly, are continued until the 31st *October* next, and until the end of the next session, unless such as are repugnant to, or inconsistent with any law which may have passed during the present session, and subject to any alterations which may have been made therein.

CHAPTER 125. An act for the relief of *Jonathan Edwards* and *Gilbert Middleton*, of the city of *Baltimore*.

CHAPTER 126. An act for the relief of *George Gay*, of *Calvert* county.

CHAPTER 127. An act for the relief of *Benjamin Morris*, of *Baltimore* county.

CHAPTER 128. An act to regulate and discipline the militia of this state.

CHAPTER 129. An act investing the justices of the levy courts of the several counties in this state with further powers.

The levy courts of the several counties are authorized, when they shall be satisfied that any error has arisen by as-

sessing property not liable to be assessed by an assessor, or in any other way, to rectify such errors, and to levy and assess, in the same manner as other county charges, any sum of money which any person may have been charged with and paid, in consequence of such error, and pay the sum, &c. to the person, &c.

CHAPTER 130. A further additional supplement to the act, entitled, An act to incorporate companies to make several turnpike roads through *Baltimore* county, and for other purposes.

CHAPTER 131. A supplement to the act, entitled, An act for the valuation of the real and personal property in this state.

The commissioners of the tax, in all the several counties within the state, may meet on the first *Monday* of *April* instead of the first *Monday* of *June*.

CHAPTER 132. An act authorizing the commissioners appointed to superintend the building of the state penitentiary to exchange with the justices of the levy court of *Baltimore* county the property therein mentioned.

CHAPTER 133. An act to incorporate the *New-Market* fire company in the precincts of *Baltimore*.

CHAPTER 134. An act to vest certain powers in the orphans' court of *Charles* county, and for other purposes.

CHAPTER 135. An act to authorize *William Handy* and *James Ritchie* to sell and dispose of the real estate of *James Handy*, late of *Somerset* county, deceased.

CHAPTER 136. A further additional supplement to the act, entitled, An act for amending and reducing into system, the laws and regulations concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and other representatives of deceased persons.

I. After the first day of *October* next the crop growing upon land devised by any deceased person, and by him or her begun, shall be considered as assets in the hands of an executor or administrator, in the same manner that the crop growing upon land not devised is.

II. If any security of a guardian, appointed by virtue of the act to which this is a supplement, shall conceive himself in danger of suffering from the suretyship, he may apply to the orphans' court by which such guardian was appointed, and the court may call on such guardian to give counter-security. If the guardian do not within a reasonable fixed time, give this security, his appointment may be revoked and another appointed. The court may compel him to deliver over to his successor the property of the ward, by process of attachment, and may direct his bond to be put in suit.

III. The several orphans' courts may call upon any executor or administrator to whom letters testamentary or of administration have been by them respectively granted, to give new security, to be approved of by such court; and upon his neglect or refusal to comply, his letters may be revoked and others issued. The court may compel him to deliver over the property to his successor by process of attachment, and may direct his bond to be put in suit.

IV. The orphans' courts may appoint a guardian or guardians to an infant, who may acquire real or personal property by gift or by purchase, in the same manner, with the same powers and upon the same terms and conditions, that they may appoint a guardian to an infant acquiring such property by descent, devise, or in right of distribution.

V. No register of wills shall be entitled to receive any fee for entering the appearance of the state to any proceedings in any of the orphans' courts, unless when a citation issues; nor for entering the continuance of any proceedings in the said courts, except for the entering the same at the term at which the continuance was granted.

CHAPTER 137. An act authorizing the sale of five thousand tickets in a lottery of the state of *Pennsylvania* for the encouragement of useful arts.

CHAPTER 138. An act for the relief of *Edward Henry* of *Worcester* county.

CHAPTER 139. An act for the preservation of the navigation of *Cabin* creek, in *Dorchester* county.

CHAPTER 140. An act to increase the powers of the high courts of chancery.

In any case where the chancellor has ordered, or may order, the production of books in the possession of any party in the said court, on the failure of such party to produce them by the day limited, or to show sufficient cause for such failure, during the first four days of the succeeding term, or any other term that may be appointed therefor, the chancellor, may, in his discretion, take the allegations in the bill of complaint of the party requiring the production, *pro confesso*, and decree *ex parte* in such manner as shall seem just and reasonable.

CHAPTER 141. A supplement to an act, entitled, An act to establish a bank and incorporate the subscribers thereto.

The directors appointed on the part of this state in the bank of *Baltimore* shall have all the rights, powers and privileges, which are enjoyed by the directors chosen by the stockholders.

CHAPTER 142. A further supplement to the act, entitled, An act relating to the public roads in *Queen Anne's* county.

CHAPTER 143. An act for removing an obstruction in *Conewogo* street, and for extending the width and changing the direction of *Ten Feet* lane in the city of *Baltimore*.

CHAPTER 144. A further supplement to the act, entitled, An act to incorporate companies to make several turnpike roads through *Baltimore* county, and for other purposes.

CHAPTER 145. An act for incorporating a society to educate and maintain poor orphan and other destitute female children, by the name of the *Orphaline Charity School*, and to repeal the act of assembly therein mentioned.

CHAPTER 146. An act to alter the time for holding the county court of *Montgomery* county.

CHAPTER 147. A further supplement to the act, entitled, An act to incorporate companies to make several turnpike roads through *Baltimore* county, and for other purposes.

CHAPTER 148. An act to provide for the making passable, through *Baltimore* county, the public road laid out from the city of *Baltimore* to the town of *Belle-Air*, in *Harford* county, and the public road laid out from *Gravelly-Hill*, on the *Reister's*

town turnpike road, to *Philemon Barnes'* plantation on the *Frederick* county line.

CHAPTER 149. An act for the benefit of *John Schnebly*, *Jacob Schnebly*, *David Schnebly* and the children of *Jacob Barnett* of *Washington* county, devisees of doctor *Henry Schnebly*, late of said county.

CHAPTER 150. A further supplement to the act, entitled, An act for the relief of sundry insolvent debtors, passed at *November* sessions, 1805. [*Vide ante.*]

CHAPTER 151. An act for the limitation of appeals and writs of error.

After the passage of this law, no writ of error or appeal shall be prosecuted upon a judgment rendered in the late general court, or upon any judgment or decree which has been or shall be rendered or passed in any county court after three years shall have elapsed from the time of the rendition, &c. Provided always, that eighteen calendar months, to be computed from the passage of this act, be allowed to all persons for the prosecution of appeals and writs of error upon any judgment rendered in the late general court, and upon any judgment or decree heretofore rendered in any county court, which was not barred by the statute of limitations before the passage of this act, and which, but for this provision, would be barred by this act. [Passed 20th *Jan.* 1808.]

CHAPTER 152. A further additional supplement to the act, entitled, An act to erect *Baltimore* town, in *Baltimore* county, into a city, and to incorporate the inhabitants thereof.

II. The persons in the several wards [who are] qualified to vote [for] the members of the city council shall on the first *Monday* in *October* next, and on the first *Monday* in every second year thereafter, assemble at the place of holding elections in the respective wards, and in each ward there shall be elected, by ballot, one person, a resident of the ward by which he is elected. The persons thus elected shall be members of the second branch of the city council. All vacancies in the second branch shall be supplied in the same manner as they are in the first branch.

III. The persons qualified to vote for members of the first branch shall, on the above days, assemble in the above manner and elect by ballot sixteen persons qualified to be members of the first branch, as electors of the mayor of the said city, two of whom shall reside in each of the wards. The electors are to meet on the first *Monday* in *November* ensuing, in the city and elect a mayor, who is to serve two years. No person shall be eligible as mayor who is not of known integrity, experience and sound judgment, twenty-five years of age, ten years a citizen of the *United States*, five years a resident in the said city, and assessed on the books of the assessor with *the* property in the said city to the amount of five hundred dollars. If two persons have an equal number of votes, the electors shall determine by lot, which shall be appointed. Before they proceed to the election, the electors shall swear or affirm that they will elect without favour, partiality or prejudice such person as they in their judgment and conscience believe best qualified for the office, and having other qualifications required by this act. The electors shall be judges of their own elections, returns and qualifications. No person who is a member of either branch of the council, or holds any office of profit in the corporation shall be eligible as an elector. Any vacancy happening in the said electors shall be filled up without delay, by an election in all the wards, of a person resident in the ward where such vacancy happened. Any vacancy of the mayoralty shall be filled up for the remainder of the term, without delay, by the electors for the time being.

IV. All nominations of persons to fill any office in the corporation, directed by the act to which this is a supplement to be made by the second branch, shall hereafter be made by a joint nomination of both branches.

V. No person shall be eligible as a member of the first branch who is not assessed, as above three hundred dollars, and no person, &c. of the second branch who, &c. five hundred dollars. The former qualifications of one and two thousand dollars are repealed.

VI. So much of the original act or any supplement thereto as is repugnant to the herein before contained provisions are repealed, provided that they be assented to and adopted at the time and by the convention herein after mentioned.

VII. The persons qualified to vote for members of the first branch shall assemble on the first *Monday* in *February* next at, &c. and elect, by ballot, sixteen persons as delegates of the city; two of which persons, &c. shall be residents in each of the wards. But no member of the city council or other officer of the corporation shall be elegible as a delegate. The delegates shall meet on the second *Monday* in *February* next, and adopt or reject the foregoing alterations and provisions established by this act, and shall return in writing, &c. a statement of their proceedings, &c.

VIII. Relates to the conduct of the election and expenses. [Passed 20th *Jan.* 1808.]

CHAPTER 153. An act authorizing the drawing of a lottery for raising a sum of money for the purposes therein mentioned.

CHAPTER 154. A further additional supplementary act to the act, entitled, An act for quieting possessions, and securing the estates of purchasers. [*Vide ante. p.* 92.]

CHAPTER 155. An act for the preservation of the navigation of the north-west branch of *Nanticoke* river, in *Dorchester* county.

CHAPTER 156. An act authorizing the court of chancery to decree in the case therein mentioned.

CHAPTER 157. An act to provide for the transcribing of certain land records in *Prince George's* county, and for making out an alphabet to the same.

CHAPTER 158. An act authorizing the levy court of *Washington* county to appoint commissioners to review the road therein mentioned.

CHAPTER 159. An act to establish a board of agriculture for *Charles* county.

CHAPTER 160. An act to establish a market, and to build a market-house in the eastern precincts of *Baltimore*, and for the regulation of the same.

CHAPTER 161. An act to lay out and make public a road in *Queen Anne's* county.

CHAPTER 162. An act to pay the civil list, and other expenses of civil government.

CHAPTER 163. A further additional supplement to the act, entitled, An act authorizing *Thomas Bailey*, late sheriff and collector of *Baltimore* county, to complete his collections, and for other purposes.

CHAPTER 164. A further additional supplement to an act, entitled, An act relating to negroes.

Doubts having arisen respecting the true meaning of the second and fifth section of the act of *November*, 1805, relating to negroes, it is enacted that no negro shall receive a certificate of freedom, in conformity to the law to which this is a supplement, except from the clerk or register of the county where such deed of manumission, or will or copy of the will, under which the negro claims his freedom, is recorded.

CHAPTER 165. An act to punish crimes, offences and misdemeanors committed on the waters of the *Chesapeake* bay, within the territorial jurisdiction of the state of *Maryland*, and for other purposes.

I. Any person who shall hereafter commit any crime, offence or misdemeanor upon the waters of the bay of *Chesapeake*, and within the territorial limits of this state, and without the body of any county of the state, and all aiders, abettors, comforters and accessories thereof and thereto, may be indicted, arraigned and tried, in the county court of the county in which he may be apprehended, or into which he may be first brought.

II. Any prosecutions hereafter to be instituted, under this law, may be removed after the indictment found, the person against whom, &c. suggesting in writing, supported by affidavit or other proper evidence, that a fair and impartial trial cannot be had in such court where, &c. It shall be lawful for the court, in their discretion, to order and direct the record of the proceedings in, &c. to be transmitted to the judges of the next

adjoining county court, before whom the same shall be heard and determined, &c.

CHAPTER 166. An act annulling the marriage of *James Barnes* and *Mable Barnes*, of *Talbot* county.

CHAPTER 167. A supplement to the act, entitled, An act to incorporate a company for erecting a bridge over *Chester* river at *Chestertown*.

CHAPTER 168. An act to fix and establish the pay of the adjutant-general and brigade-inspectors.

CHAPTER 169. An act to establish a board of agriculture for the counties therein mentioned.

CHAPTER 170. An act for the payment of the journal of accounts.

In addition to these acts a number of resolutions were passed, all of which are of a local nature except one, which is here inserted *literatim et punctuatim*. As there can be no "judgment and wisdom" without deliberation, and as the embargo act was passed without any knowledge of facts, but upon *the high responsibility of the President*, according to Mr. *Adams*, we cannot conceive a more bitter sarcasm upon the blind confidence and slavish adulation which distinguished the proceeding of Congress on that momentous occasion.

WHEREAS the general assembly of *Maryland* have, on all occasions, viewed with the deepest interest and utmost solicitude, every change in the aspect of our foreign relations, the present novel and interesting crisis peculiarly demand an expression of the public will, through the medium of the legislature; therefore

RESOLVED, That the late act of congress, imposing an embargo, is in the opinion of this general assembly, a measure strongly characteristic of the judgment and wisdom of our national councils, and well calculated to inspire confidence in the individuals of the nation which they represent.

BIOGRAPHY.

OF the different subjects which our plan embraces, not only our taste, but our sense of its intrinsic importance, will induce us to remit no exertion in the collection of accurate sketches of those distinguished men, who have adorned *the tide of time*. No pursuit is more worthy the attention of the liberal scholar than that which leads him into the interior recesses of the studious, and unfolds to his inquisitive research the restless operations of genius. There he contemplates the infant conceptions of ambition, and pursues her footsteps through every impediment, until she attains the pinnacle of fame.

He may listen to the thunder of a *Demosthenes* who rekindled the expiring flame of patriotism in every *Athenian* breast, or admire the perspicuous mind of a *Mansfield* which indicated and explained the immutable principles of truth to a *British* bar.

He who peruses the abundant volume of biography will find a mirror in every page. *The world*, says Livy, *contains people of all sorts*. If the student be dismayed by the tyranny of oppression, or shackled by the galling chain of poverty, he will there learn that it is the glorious privilege of genius to surmount every obstacle. If, without regard to the common maxims of life, he suffer himself to be deluded by the syren song of pleasure, or fascinated by the bewitching strains of imagination, he may learn from the bitter experience of those who have trod these velvet paths, that *nothing will supply the want of prudence; and that negligence and irregularity, long continued, will make knowledge useless, wit ridiculous, and genius contemptible.*

In so fertile a field no man can long slumber in the apathy of neutrality. However he may be depressed by despondency or enervated by indolence, the brilliant spectacle which is there exhibited to his curious eye, cannot but rouse his inactivity to exertion, and summon him to vindicate the honour of his nature.

If such be the uses and pleasures of Biography, the Editor requires no apology for devoting a portion of his Miscellany to so important a study. The bench and the bar of the *British* empire have furnished the world with examples of eloquence and learning, which would have added new lustre to the brightest days of *Greece* or the noblest period of *Roman* history. Upon this copious exchequer the Editor will draw with confidence, being assured that he shall contribute to the treasures of his own country, and render that homage which is justly due to merit under whatever clime it diffuse its genial rays. He will also consider himself as highly indebted to those who may supply him with memoirs of the eminent men of this nation, who have challenged a place on the rolls of fame, and taught an envious world that *America* is not less the nurse of liberty than the cradle of glory.

BIOGRAPHICAL SKETCH

OF

SIR JAMES MACKINTOSH,

RECORDER OF BOMBAY, &c.

WE are fully sensible how difficult it is to comprise, within the narrow limits allotted to our biographical sketches, any thing like a satisfactory account of the life and writings of men distinguished for genius, and eminent for learning. But we are equally sensible how curious the public must feel, to learn whatever particulars may be collected of persons, who, like the gentleman of whom we are now proceeding to speak, are enabled, by the direction of their talents, so powerfully to influence the opinion and the taste of the nation. Respecting such men, we think it better to say even a little, than remain wholly silent; always anxious to exert ourselves to gratify the laudable curiosity of our readers, while we are equally desirous to advance nothing, but what we derive from faithful and authentic sources.

James Mackintosh (now Sir *James*) is descended of an ancient and respectable family, in the Highlands of *Scotland*, which possessed a small estate of about 500*l.* a-year. He was born on the 24th of *October*, 1765, in the parish of *Dores*, in the county of *Inverness*, and the care of his infant years was intrusted to his grandmother. At the age of seven he was relieved from female tuition, and removed to the school of *Fortrose*, where his juvenile studies were ably superintended, first by a Mr. *Smith*, and afterwards by a Mr. *Stalker*. His proficiency was such as announced the dawn of extraordinary

talents; and he was particularly remarkable for quickness of conception and retentiveness of memory, the power of the mind, which is generally the earliest to expand itself, and in which to excel is the first intellectual struggle of puerile emulation. When he had scarcely reached the age of thirteen, he had already acquired all that the school of *Fortrose* was competent to teach; and by the advice of his master he was sent to King's College, *Aberdeen*. Here he applied with equal diligence and success, to a more critical study of the classics, under Mr. *Ogilvie;* and was afterwards initiated in the elements of philosophy, under Dr. *Dunbar*. In the one he evinced the elegance of his taste, in the other the acuteness of his understanding, and in both he afforded an instance of such rapid improvement as had seldom been observed in that or any other university. To whatever department of science the propensities of his own mind inclined him, he was now intended by his friends for the profession of physic, and with that view he removed to *Edinburgh*. The literary fame, which the superiority of his talents had acquired at *Aberdeen*, travelled before him to *Edinburgh*, and, on his arrival, his acquaintance and company were eagerly courted by those students who aspired to equal eminence, or who embarked in similar pursuits. If *Edinburgh* afforded him more various facilities of improvement, it also held out opportunities of pleasure and dissipation, in which the most cautious youth is often but too prone to indulge. Young *Mackintosh* was not altogether proof against the frailties of his age, and he indulged pretty freely in all those enjoyments in which its ardour and impetuosity are wont to revel. The character however of his dissipation was very different from that of the generality of young men. Whatever might be the inconstancy of his other amours, the love of knowledge never once deserted him. Whether he sighed in the Idalian groves, or joined in the roar of the convivial board, he had constantly a book in his hand; and most commonly an ancient or a modern poet, upon whose sentiments or diction he frequently interposed some observations, and to which he endeavoured to direct the attention and remarks of others. He was thus unremittingly

active in the exercise of his mind, and thus happily contrived to imbibe instruction with his wine. But the particular bias of his mind soon began to declare itself; his attendance at the medical lectures became daily less frequent; and he was jocosely styled, by his fellow students, an *honorary* member of the classes. Notwithstanding however this apparent inattention, his medical knowledge was astonishingly extensive, and he was observed to collect it from conversing with those who were known to be most sedulous and successful in such pursuits. He was likewise a distinguished member of the Medical Society, in which he made his first essay in public speaking, and in which he was admired, not only for eloquence and acuteness, but also for the profoundness of his medical researches. His favourite society however was the *speculative*, in which literary, metaphysical and political subjects were discussed, and which afforded him happier opportunities of displaying the versatility of his genius and the variety of his accomplishments.

In the year 1787, the career of his medical studies drew near to a close; and previous to taking his degree of Doctor, he was obliged to write a Latin thesis, in conformity with the rules of the university, which is submitted to the professors as a probationary essay. His habitual indolence, for no man was ever, with such mental activity, physically more indolent, and his general disrelish of medical subjects, made him postpone this production until the last moment; but when it was produced, it bore the stamp and features of a mind which could give birth to nothing vulgar or subordinate. He chose indeed a subject (muscular motion) which at once gave room for the display of his physiological and metaphysical knowledge, and the intricacy and obscurity of which he aptly alluded to in the motto prefixed to the dissertation: "*Latet arcanâ non enarrabile fibrâ.*" On this intricate and obscure question, he was supposed to have thrown as much light as it has hitherto been thought susceptible of, and as it was well possible to concentrate within the limits usually prescribed to these academical essays. But another, and more striking instance here occurred of the

indolence that early marked the disposition of Mr. *Mackintosh*. Although the examination of the different candidates, who aspired to medical honours at the same graduation, was not to take place till between ten and eleven o'clock in the forenoon, yet Mr. *Mackintosh* could not prevail upon himself to get ready in time, but kept the *Senatus Academicus* waiting for him nearly a whole hour. For this disrespectful inattention, he, however, abundantly atoned, by the quickness and dexterity with which he replied to the different objections that were urged against his positions.

Having now obtained the privilege of teaching and practising medicine, he impatiently hastened to *London*, which he had long anxiously wished to behold, as the centre of talent and of learning. He had there very different temptations to withstand from those which first entangled him at *Edinburgh;* and as they pressed around him, in much more various shapes and more fascinating forms, they naturally made him cling more closely to such a residence, and as naturally alienated him from a profession already distasteful to him, and the exercise of which was incompatible with his favourite pursuits and abode. His friends however continued to urge his entering on practice; and at one time he was advised by Dr. *Frazer*, a near relation of his, to attempt an establishment in *London* or *Bath:* at another, with better prospects, he was preparing to set out for *Petersburgh*, where he had hopes of succeeding Dr. *Roberson*, as physician to his Imperial Majesty. At this time his pecuniary resources were far from being ample; and this incipient embarrassment of his circumstances, joined to his aversion from his profession and his reluctance to quit *London*, contributed not a little to increase his perplexities. From this dilemma he was soon extricated by the death of his father: an event which, however it must affect his filial feelings, left him at least at liberty to follow his own choice, and to engage in a profession more congenial with the cast of his mind, and more coincident with the course of his reading. Accordingly he lost no time in entering his name at *Lincoln's Inn*, and readily preferred *Coke* and *Lyttleton* to *Galen* and *Hippocrates*.

Shortly after he commenced the study of the law, the *French* revolution broke out, and opened such auspicious prospects to the friends of freedom, among the most ardent of whom was Mr. *Mackintosh*, that it almost wholly engrossed his attention and his time. Among the numerous productions to which this portentous event gave occasion, Mr. *Burke's* celebrated letter chiefly attracted his notice, and in some degree excited his astonishment. No person could entertain a higher degree of respect than Mr. *Mackintosh* for the transcendent abilities of Mr. *Burke*. He had always looked up to him as his master and model, in political prudence and principles; and his veneration for him is known to have bordered on something superstitious or even idolatrous. No sooner, however, had he perused the work, than he conceived the design of answering it; a bold and hazardous one he confessed; applying to his own inability the following line of the poet:

Infelix puer, atque *impar* congressus *Achillei*.

But the performance of the task justified its boldness; and the public and himself are both much indebted to this essay of his literary prowess. The *Vindiciæ Gallicæ* rescued him from that comparative obscurity in which he had, in some measure, allowed his abilities to languish, previous to this period: not that he had not before essayed in pen on a public occasion. For, during the debates on the regency, in 1788, he issued his first political pamphlet, in favour of the claims of the Prince of *Wales;* but it was to the appearance of the *Vindiciæ Gallicæ* that he was chiefly indebted for the acquaintance of the most distinguished political characters of the time, more particularly of those who embraced the same side of the question as himself. Among them we need only mention the late Duke of *Bedford*, Messrs. *Fox*, *Sheridan*, *Grey*, *Whitbread*, &c. whose praise and encouragement could not fail of being highly flattering to the pride of a young author. But, most probably neither he himself could have emerged into this celebrity, which he now enjoys, nor would his country have been benefited with the subsequent more vigorous effusions of his mind, were it not for a material change that had previously

been wrought in his habits. It happened most luckily for him, that nearly two years before, his inclination led him to change a single for a matrimonial life; and in 1789 he married Miss *Stuart*, a young lady of exquisite good sense and the most conciliating disposition, by whom he has had one son and four daughters. In her he found an intelligent companion, a tender friend, and above all, a prudent monitress. He has often been heard to confess, that it was the fond and frequent intreaties of conjugal solicitude, that gradually reclaimed him from dissipation, and urged his indolence to all those exertions, more particularly to his first, the *Vindiciæ Gallicæ*, which had till then proved either useful or creditable to him; and with respect to the circumstances under which that work was composed, a work that exhibits such cogency of argument, such perspicuity of arrangement, such vigour of sentiment and such splendour of declamation, it may be interesting to know that it was composed amidst the anxiety and distraction that must naturally be felt by a father, husband and a brother, surrounded by a family consisting principally of females, all of whom were at the moment variously and seriously indisposed, and who were incessantly soliciting his assistance and consolation. Indeed, when the first sheet of the work was sent to the press, scarce a sentence was written of the chapter that was to follow; yet there appears no interruption in the chain of argument, nor in the thread of the narrative; and the only indications that occur of hurry, disturbance or inattention, are the numberless typographical errors by which the first edition was deformed.

As the mind of Mr. *Mackintosh* was now no longer so much depressed by difficulties, relaxed by indolence, or distracted by dissipation, his prospects began to brighten, as his faculties reassumed their native elasticity and tone. He therefore applied himself with increased diligence and renovated ardour to the prosecution of his professional studies; with what success we leave it for those to judge who have heard him plead before the committees of the house of commons, at the bar of the house of peers, or who had the good fortune to be present at his admirable and memorable defence of M.

Peltier. Much less shall we attempt to appreciate his merits as a lawyer, though we may safely say that he combines all the more essential qualities that constitute the character of a pleader or an orator—learning, judgment, acuteness, penetration, easy and copious elocution, graceful and appropriate gesture. The only defects, which the most penetrating and competent judges discover in him, are too nice a refinement in his reasoning for the apprehension of ordinary hearers and want of compass, variety and modulation in his voice.

But the most arduous and useful undertaking, in which Mr. *Mackintosh* has hitherto embarked, is the composition of the course of lectures which he delivered in *Lincoln's Inn* Hall. The design indeed is vast; and the mightiest mind, perhaps of the age, observed of it, when the plan was submitted to him, that an adequate execution of it would require the concourse and cooperation of all the philosophers of every age and country. It had long been, as Mr. *Mackintosh* himself observes, "the subject of his reading and reflection:" and it required, indeed, the unbounded comprehension of his mind, and the vast capaciousness of his memory to embrace and treasure up the immense variety of materials out of which such a plan was to be constructed. His own eagerness to undertake the task was strengthened and encouraged by the gravest authorities. "I was confirmed in my opinion," says he, "by the assent and approbation of men,* whose names, were it becoming to mention them on so slight an occasion, would add authority to truth, and furnish some excuse even for error.†" The object and intention of the lectures will likewise be best understood, from the energetic and eloquent terms in which he himself has expressed them.‡ "I know not whether a phi-

* Among the more prominent were Lord Rosslyn, Mr. Pitt, Mr. Addington, Lord Melville, Mr. Canning, &c. all of whom wrote letters to him in the highest strain of compliment, after reading his introductory discourse.

† See the introductory discourse to the lectures.

‡ Ibidem.

losopher ought to confess, that in his inquiries after truth, he is biassed by any consideration, even by the love of virtue: but I, who conceive that a real philosopher ought to regard truth itself, chiefly on account of its subserviency to the happiness of mankind, am not ashamed to confess, that I shall feel a great consolation at the conclusion of these lectures, if, by a wide survey, and an exact examination of the conditions and the relations of human nature, I shall have confirmed one individual in the conviction, that justice is the permanent interest of all men and of all commonwealths. To discover one link in the eternal chain by which the Author of the universe has bound together the happiness and the duty of his creatures, and indissolubly fastened their interests to each other, will fill my heart with more pleasure, than all the fame with which the most ingenious paradox ever crowned the most eloquent sophist."

Will it hereafter be believed, that a task undertaken through so much labour, and with such virtuous intention, would have been opposed by some of the benchers of *Lincoln's Inn* (men we must suppose of liberal minds and liberal education) under the false and futile pretence, that their hall should not be prostituted to the purposes of jacobinism. Fortunately for himself and for the public, Mr. *Mackintosh* had other judges. Lord *Rosslyn*, then Lord High Chancellor, sent an authoritative mandate to open the hall, and the malignity of this insignificant cabal was silenced and confounded. Never was a course of lectures of any sort so illustriously attended. Twenty-five peers and about fifty commoners were among the most assiduous in their attendance, together with nearly all the metropolis contained of men conspicuous for their talents or their learning. It will be for them to pronounce whether jacobinism and its parent, the *new* philosophy, found in Mr. *Mackintosh* a partisan and a preacher of their principles; or whether, on the contrary, the pernicious system, which they have endeavoured to erect against the altar and the throne, against every thing that is feeling, moral and rational in the nature of man,

has not sustained an eternal overthrow, from the vigour of his arguments and the thunder of his eloquence:

..... furialia monstra
Fulmine compescit linguæ.

Never were the energies of a mind more forcibly or more variously exerted: never was greater affluence of intellectual wealth displayed. Scarcely is there a topic of literature but some of his lectures touched upon, or a department of science which they have not surveyed. The copious stores of his memory constantly supplied him with authorities and quotations from philosophers, orators and poets of every age and country, to establish his positions and variegate his matter. What was intricate, he disentangled; he confirmed what was doubtful; embellished what was dry; and illustrated what was obscure. Like the splendour of the golden bough that bore the Trojan hero through the darksome regions of the nether realms, the luminous glance of his genius darted through all the branches of the tree of knowledge, and gilded with a new light every leaf upon which it shone:

Aureaque ingenii per ramos aura refulsit.

We have dwelt longer upon Mr. *Mackintosh's* lectures than upon any other of his intellectual efforts, not only because it was the most useful, as well as the most splendid, that he, or any other man of genius, could have made; but more particularly because they can be but little known to the public, as they could only have been attended by, comparatively, a few. It is, however, our anxious hope, that though the public may never behold them in the shape in which they were delivered, the spirit of them at least may be embodied in the form of an essay or a treatise on the principles of morals and of politics, which they have laid down so distinctly, and so clearly ascertained. Both the late and the present administration were deeply struck with their excellence and usefulness; and were not backward to acknowledge that they gave Mr. *Mackintosh* very strong claims not only to the admiration, but the gratitude of his country. They accordingly made him several offers of lucrative and honourable appointments; and, very re-

cently that of under secretary of state in the home department; but he declined accepting them, as too exclusively connected with parties and politics, and as rather unsuitable with his professional character and avocations. No sooner, however, did the Recordership of *Bombay* become vacant, than an unsolicited offer of it was made to him, as a thing not liable to the same objections. Even this office, though highly desirable in many other respects, we cannot well suppose him to have undertaken, without a severe effort of resolution and self denial; for his acceptance of it removed him from the only sphere in which the powers of his mind seemed destined to move, and from the only theatre where their variety and extent could be fairly judged, and worthily exhibited. In this reluctance on his part, if any such he felt, the regret of his country must naturally sympathize; for the light of his genius and the powers of his pen can be but ill spared in these dark, doubtful and exigent times. But the feelings of a father prevailed over every other consideration, and he determined not to expose himself to any future reproach for having left unimproved so fair an opportunity of competently providing for his numerous family, which has been considerably increased since his second marriage, with Miss *Allen* of *Chessella* in *Pembrokeshire*, a lady much distinguished for her mental accomplishments and literary acquirements; and in whose converse, now that he is widowed of the intellectual intercourse he so eminently enjoyed, his understanding, as well as his heart, cannot fail of finding congenial and inexhaustible resources.

There is a circumstance somewhat remarkable in the literary life of Mr. *Mackintosh*, which we had nearly omitted, and to which he himself frequently reverts with the fondest recollections, not however unmixed with sorrow and regret; we mean his acquaintance with Mr. *Burke*. To his enthusiastic admiration of that great man we have already adverted; yet, widely as he was acquainted with all the eminent characters of the day, it was but nearly at the close of Mr. *Burke's* life that he became personally acquainted with him. The interview

was solicited by Mr. *Burke* himself, who sent Dr. *Lawrence* with a long letter of invitation to Mr. *Mackintosh*, requesting him to pass a few days with him at *Beaconsfield*. How eagerly such a request was complied with, by Mr. *Mackintosh*, will be best imagined by those who could discover the near resemblance which their minds bore to each other, and who have observed that strong attraction which operates so powerfully between congenial spirits. It is obvious to suppose that they mutually disclosed their respective opinions respecting the causes and consequences of the *French* revolution; and that, whatever abatement has since been remarked in Mr. *Mackintosh's* admiration of that great event may, in some decree, be ascribed to the influence of Mr. *Burke's* remarks, together with the soberer observations of his own more ripened judgment.

It may now perhaps be expected that we point out the series of Mr. *Mackintosh's* publications, the subjects of which they treat, the opinions passed upon them, and the familiar habits of the man, as well as the intellectual character of the writer. On these points we must be brief, and, we fear very imperfect. The first essay which Mr. *Mackintosh* committed to the press was a pamphlet on the question of the regency in 1788, in which he asserted the policy of making the Prince of *Wales* sole regent. Several other political pamphlets, arising out of the events of the day, of which we do not now recollect the titles, preceded or followed the *Vindiciæ Gallicæ:* but this was the first production that bore his name, and which swelled to the size of a legitimate volume. With the subject it discussed and the favourable impression it made upon the public, our readers are already well acquainted. Since the publication of the work, every page of which glows with the purple light of youthful genius, nothing appears inscribed with Mr. *Mackintosh's* name, till we come to his introductory *Discourse on the Study of the Law of Nature and of Nations*, of which we shall only repeat, that the most distinguished statesmen and philosophers of the nation have declared it to contain a more recondite and comprehensive view of the subject than they had ever

before met with in the course of their reading. His pen, however, did not remain wholly unemployed during that long interval. Many of its productions are to be found scattered throughout our different periodical publications, to which, however we do not pretend accurately to refer. But among them our readers cannot fail to discover some of the most splendid specimens of sound and elegant criticism.*

His splendid oration in defence of M. *Peltier* is too widely known, and too generally admired, to require any mention or comment on our part. No where is there depicted so faithful, or a more horrific picture of the more prominent actors in the *French* revolution. No where can be acquired a juster insight into the present dark designs and ambitious projects of the consular government [1804]: nor has Mr. *Mackintosh* been backward to lend his literary aid towards rousing and animating the spirit and energy of the country, at this awful crisis of public affairs. The most pure and ardent patriotism runs through every sentence of his speech to the *Loyal North Britons*, in which volunteers he was a captain, and in the *Declaration of the Merchants*, &c. read at the Royal Exchange, which is now known to have flowed from his patriotic pen. Mr. *Mackintosh*, were he to write no more, has already written enough to entitle him to rank among the very first of our most accomplished writers; but, as his new situation must open new views to his keen and indefatigable observation, we may fairly expect still more solid and finished productions from the activity of his powerful and prolific mind.

With respect to the character of his mind, it has pretty generally been observed, that judgment, acuteness, sagacity, comprehension and memory constitute its principal powers; not that he is deficient in fancy and imagination, which his writings prove him to possess in a very eminent degree, but because they seem to be over-awed from any thing like extravagant and wanton flights by the severity of his judgment and

* See the Critique on Mr. *Burke's* Regicide Peace, and on the Miscellaneous Works of Mr. *Gibbon*, in the *Monthly Review*.

the chasteness of his taste. There is another quality with which his mind is singularly gifted, and which naturally results from his taste and judgment; we mean a sort of elective attraction for whatever is sublime and beautiful in the expression and thoughts of other writers, and a felicity of assimilation, by which he instantly converts it into his own. We may fairly say his *own;* for when it is re-issued, it appears clothed in such a variety of new lights and colours, that scarcely any particle can be traced of the original substance:

Mille trahit varios adverso sole colores.

If examined separately, it will be generally allowed, that the faculties of his intellect are of the most vigorous mould; but a nicely discriminating eye will contemplate, with more delight and animation, the fair proportions of the general structure, and the happy manner in which they all so amicably conspire, and so equally come forward in the performance of whatever he undertakes. Indeed it may as justly be said of intellectual as of corporeal beauty,

It 's not a lip or eye we beauty call,
But the full force and joint result of all.

In social and domestic life, Mr. *Mackintosh* is generally acknowledged to possess the most amiable and estimable qualities. He is a fond husband, an affectionate father, a faithful friend; and in gentleness of manner, equability of temper and amenity of disposition, he cannot easily be surpassed. He is not more solicitous to acquire, than to communicate information; and, upon whatever subject he is consulted, he is sure to point out all the sources that can contribute to throw light upon it, so various is his reading, so prompt his recollection. Not a new publication appears that he does not immediately glance over; and from what appears to be the most superficial and transient perusal, he is able to collect the scope of the work, and the manner and the degree of success that characterize the performance of it. He is particularly fond of reciting the more beautiful passages, either of the ancient or modern poets; and no topic can be started which he cannot employ them to illustrate or adorn. His mornings, when not taken

up with professional business, he constantly devotes to reading or composing; and as he reads or composes, he has always before him a glass of toast and water, which he frequently sips; and in the evening he meets the circulation of the more jovial glass, with one of lemonade, mostly made with soda or seltzer water. His conversation must always instruct, but it has equal powers to please; nor is it ever roughened by austerity presumption or pedantry.

> Taught by his converse happily you'd steer
> From grave to gay, from lively to severe.

Although he abstains from wine, he freely indulges in the mirth which it promotes. He is naturally, indeed, inclined to be cheerful and facetious; but neither his cheerfulness nor his pleasantry is borrowed from the bottle; and the most zealous votaries of *Bacchus* are willing to confess, that his good nature can glow without being warmed by *Burgundy;* and that his wit can sparkle unprompted by *Champaign.* He is therefore a strong and signal exception to the observation of our great moralist; for though under a depression of spirits, produced by whatever cause, he has frequently called in the aid of the jolly god, he has however ultimately proved, that he was not to be enslaved by his auxiliary.

Such, nearly, are the leading lineaments that mark the character and habits of Mr. *Mackintosh.* But as we all know, that

> Envy will merit as its shade pursue,

so ought we to expect, that such splendour of talents and of fame could not have failed to provoke its malignity. Various indeed are the censures it has passed upon him, as a politician and a writer; but he is chiefly charged with a dereliction both of his political principles and his political friends. In his lectures he is said to have remitted much of that ardour and alacrity with which he had espoused the cause of freedom in his *Vindiciæ Gallicæ.* To this charge he has himself, in a great measure, pleaded guilty. But did not subsequent events in a great measure justify a change of opinion, or may it not have been suggested by a maturer judgment, a more enlarged experience, as it certainly has been sanctioned by the gravest

authorities? Even the spirit of his style is supposed to have evaporated with his love of liberty; and to us also it appears to be changed, but we think it is a change for the better. For doubtless it is no fault to retrench redundance, to reject ambitious ornament, to avoid too much stateliness in the march and too much uniformity in the measure of his periods, and to have substituted in their room more precision of language, more compression of thought, more variety of cadence and more chasteness of metaphor. These however are defects or blemishes, which it was open for his critics and his rivals to detect and dilate upon. But a charge of degeneracy of style or of inconsistency of politics whitens into innocence itself, when compared with the blacker and more serious accusation of laxity and scepticism in matters of religion, which nothing but the blindest and bitterest enmity could have possibly suggested. We think we may confidently assert, that not the slightest shade of such an imputation could ever be fairly drawn from any one sentiment which he has seriously uttered, or any one sentence which he has deliberately written. It is of the highest importance indeed to refute such a charge, not merely as it individually affects the character of Mr. *Mackintosh*, but because the shadow of such suspicions should not be allowed to hang over the name of a man, whose opinion on every point, but more particularly on those of grave and serious moment, must have so much weight and influence upon the minds of others. We therefore feel the most sincere and solid satisfaction, in being able to meet this equally foul and false charge, with the most direct and triumphant refutation. For we have often heard, and indeed we know it from the most unquestionable authority, that at a time when Mr. *Mackintosh* was disposed to most serious reflection, by a severe domestic affliction,* and when his mind was able to ascend to the highest tone of thinking, he made upon these dread matters the following solemn declaration, to a man† the best qualified, in every respect, to receive such an effusion of his soul, to a most accomplished

* The death of his first wife. † Dr. Parr.

scholar, a most learned and pious divine, to his most enlightened and confidential friend.

"The philosophy which I have learned aggravates my calamity, instead of relieving me under it; my wounded heart seeks another consolation, governed by those feelings which in every age and region of the world have actuated the human mind; and I seek relief and find it in the soothing hope and consolatory opinions that a benevolent wisdom inflicts the chastisements, as well as bestows the enjoyments of human life; that a superintending goodness will one day enlighten the darkness that surrounds our nature and hangs over our prospects; that this dreary and wretched life is not the whole of man; that an animal so sagacious and provident and capable of such proficiency in science and virtue is not like the beasts that perish; that there is a dwelling-place prepared for the spirits of the just, and that the ways of God will yet be vindicated to man; and I sincerely declare that Christianity, in its genuine purity and spirit, appears to me the most amiable and the most venerable of all the forms in which the homage of man has ever been offered to the AUTHOR of his being."

On such solemn sentiments, so energetically expressed, we shall not presume to offer a single observation: we shall only remind the friends and admirers of Mr. *Mackintosh*, that they ought rather to rejoice than repine at these impotent attempts to disparage his merits, and tarnish his reputation. They must know that these clouds, with which envy endeavours to overcast his name, must at last only tend to brighten and diffuse its lustre. They must know that his character has more than sufficient in it of resilience and of energy to resist and overpower all the efforts that the spite of defeated rivals, or the malice of detected sophistry can accumulate against it. They must know that transient must be the triumph of meanness and malignity; and though *Antæus* perchance might strike him to the ground, he is sure to rebound like *Hercules*.

Such are the particulars which we have collected of the life, the character and the writings of Mr. *Mackintosh;* and which we trust will prove as interesting to our readers as they have

proved to ourselves. We do not profess to be the panegyrists or apologists of Mr. *Mackintosh*, though we are well aware that his rivals and his enemies will accuse us of having over-rated his talents, and allowed them a superiority to which they have no claim. We can only say, that what we have advanced is no more than the genuine opinion impressed upon our mind, both by what we have read and by what we have heard. Nor are we less sensible, that while by some we are thus accused of extravagant eulogy, by others, and those perhaps the most competent to estimate his merits, we shall be censured rather as sparing than prodigal of praise.